IV2209426

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INTERNAL AFFAIRS BUREAU

INVESTIGATIVE SUMMARY
IAB CASE# IV 2209426

Subject #1: **ANTHONY PIMENTEL, EMPLOYEE [redacted]**
DEPUTY SHERIFF, TWIN TOWERS CORRECTIONAL FACILITY

Subject #2: **DAVIE CHANG, EMPLOYEE [redacted]**
DEPUTY SHERIFF, TWIN TOWERS CORRECTIONAL FACILITY

Subject #3: **CORDOVA, KRIS, EMPLOYEE [redacted]**
DEPUTY SHERIFF, TWIN TOWERS CORRECTIONAL FACILITY

Date: **November 5, 2007 (Monday)**

Time: **2045 hours**

Location: **TWIN TOWERS CORRECTIONAL FACILITY - MODULE 241**
450 Bauchet Street, Los Angeles 90012

<u>Allegation</u>

This case is in reference to a criminal investigation involving Assault Under Color of Authority - 149 P.C. and a subsequent administrative investigation.

Inmate [redacted] (Booking [redacted]) alleged that on November 5, 2007, Deputy Davie Chang, Deputy Anthony Pimentel and Deputy Kris Cordova assaulted him under Color of Authority by hitting him in the back, neck, face, and applying a chemical aerosol spray to his anus.

Deputy Cordova was a deputy sheriff [redacted] at the time of the alleged incident and received an [redacted]. He was released from [redacted] [redacted] subsequently resigned.

> **<u>IAB Note</u>: For purposes of this summary, Cordova will be hereafter referred to as Deputy Cordova.**

Deputy Pimentel was a deputy sheriff [redacted] at the time of the alleged incident and received an [redacted]. He was demoted and re-instated to Custody

Assistant on November 20, 2008.

> **IAB Note: For purposes of this summary, Custody Assistant Pimentel will be hereafter referred to as Deputy Pimentel.**

On November 6, 2007, at approximately 0800 hours, Inmate [redacted] fell in his housing module claiming the fall occurred as a result of his back being injured during the assault the previous evening involving Deputies Pimentel, Chang and Cordova. Los Angeles City Fire Department Paramedic Cooper Kunath and EMT Danny Bowen responded to Module [redacted] and evaluated Inmate [redacted] back prior to transporting him to Los Angeles County Medical Center (LCMC) for treatment.

Prior to Inmate [redacted] leaving for LCMC, Sergeant Patterson briefly interviewed Inmate [redacted] regarding the alleged assault by deputies.

> **IAB Note: Refer to Exhibit E for the CD containing the video interview of Inmate [redacted] conducted by Sergeant Patterson prior to his transport to LCMC.**

Inmate [redacted] allegation was briefly investigated by Internal Affairs Bureau Sergeant John Harris (Employee [redacted]) as a possible non-criminal, unreported use of force by deputies. Sergeant Harris conducted an interview of Inmate [redacted] on November 7, 2007.

> **IAB Note: For the transcription of Sergeant Harris' interview with Inmate [redacted] refer to the Internal Criminal Investigations package.**

At the conclusion of Sergeant Harris' interview with Inmate [redacted] Sergeant Harris took photographs of Inmate [redacted] injuries.

> **IAB Note: For Inmate [redacted] photographs, refer to the Internal Criminal Investigations package.**

On November 8, 2007, the Sheriff's Department Internal Criminal Investigations Bureau (ICIB) opened an investigation at the request of Twin Towers Correctional Facility Captain Gregory Adams (Employee [redacted], regarding Inmate [redacted] allegation.

ICIB Sergeants Stephan Christopher (Employee [redacted]) and Susan Vaziri (Employee [redacted]), were assigned to investigate the criminal complaint and document the facts in confidential reports listed under file #007-00035-2003-441.

ICIB Sergeant Christopher and Sergeant Matthews conducted an interview of Inmate

on November 20, 2007. The following is a general summary which includes Sergeant Harris' interview of Inmate

Inmate stated that on November 5, 2007, at approximately 2045 hours, Deputies Cordova, Pimentel and Chang approached his cell and announced they were going to do a random cell search. He and his cell mate, Inmate were handcuffed and removed from the cell. Inmate said he was wearing a T-shirt and boxers.

Inmate was escorted to the visiting area. Inmate was escorted to the outdoor recreation area and was told to sit on the floor. Deputy Cordova stood in front of Inmate as Deputy Chang knelt down beside Inmate

Deputy Pimentel told Inmate to apologize to his partner. said nothing. Deputy Chang punched Inmate two or three times in the right jaw area. Deputy Pimentel grabbed Inmate shirt near the collar and yanked it causing it to rip. Inmate sustained marks on the left side of his neck.

Deputy Pimentel told Inmate to lay on his stomach. Deputy Cordova placed one knee on back, and the other knee and shin between neck and ear.

Approximately thirty seconds later, Inmate felt someone pulling his boxer shorts down and separate his buttocks. He then felt something fondling his anal cavity. Two seconds later, Inmate felt and heard a "squirt" noise. He felt liquid run down his anal cavity to his testicles. The deputies told him to lay on his stomach for a minute. Approximately two minutes after he was sprayed, Inmate felt a burning sensation in the area of his anal cavity and testicles. The deputies left for approximately ten minutes. They then returned and escorted him back to his cell.

Inmate stated the deputies told him that the next time, he will be going to LCMC with an add charge. Inmate interpreted this remark as, they were going to beat him severely where he needed to go to LCMC and they would justify their actions by saying he swung at them.

After removing Inmate handcuffs, one deputy pulled the trigger on the Taser causing it to make a clicking noise. The deputies said, "Boo", began to laugh, and closed the cell door behind him.

At wristband count (2200 hours), Inmate showed Deputy Bilbao his red neck and requested to see a doctor. Deputy Bilbao asked Inmate what happened. Inmate said he had an incident. Inmate raised his hands and said it wasn't him. Deputy Bilbao said he would return and never did.

Inmate said he pushed the emergency button throughout the night and told the module officer that he needed to see a doctor. The module officer said there was no

doctor on duty.

The next morning, Inmate [redacted] said after he showered, he tried to climb the stairs and his back went out. The nurse responded and called for the Paramedics to respond.

<u>IAB Note</u>: Refer to Exhibit A for a copy of the Internal Criminal Investigations Bureau package.

At the conclusion of the criminal investigation, the case was submitted to the Los Angeles County District Attorney's Office, Justice System Integrity Division (JSID) on September 9, 2008, for review and consideration of filing criminal charges under section: 149 P.C. - Assault Under Color of Authority.

On September 8, 2010, Deputy District Attorney Paul M. Nunez, assigned to the Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office declined to file the case citing, "Lack of Sufficient Evidence."

The following is the conclusion of the District Attorney's Charge Evaluation Worksheet reflecting the disposition of the matter:

"Penal Code section 149 provides that "Every public officer who, under color of authority, without lawful necessity, assaults or beats any person" is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by such fine and imprisonment.

It is clear, based on [redacted] allegations, that the elements of P.C. 149 are established in his allegations. However, [redacted] credibility is critical to the analysis in this case.[10] During the course of the investigation, [redacted] made several

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[10] **CALJIC 2.20 Believability of Witness reads:**
Every person who testifies under oath is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.
In determining the believability of a witness you may consider anything that has a tendency reasonably to prove or disprove the truthfulness of the testimony of the witness, including but not limited to any of the following:
The extent of the opportunity or ability of the witness to see or hear or otherwise becomes aware of any matter about which the witness testified;
The ability of the witness to remember or to communicate any matter about which the witness has testified;
The character and quality of that testimony;
The demeanor and manner of the witness while testifying;
The existence or nonexistence of a bias, interest, or other motive;
The existence or nonexistence of any fact testified to by the witness;

statements regarding matters central to the allegations that are inconsistent with either his prior statements or other evidence. Furthermore, additional witnesses or physical evidence cannot corroborate several of [redacted] allegations. Without maintaining sufficient credibility and no corroboration, the filing of these charges is not warranted.

[redacted] Injuries

Dubious Back Pain

[redacted] initially requested treatment for apparent back pain due to a fall. [redacted] told responding deputies that he fell coming down the stairs on November 6, 2007 and as a result experienced back pain and had trouble moving his extremities. [redacted] did not complain of any other injuries to those who initially helped him including Deputy Ahrari. Throughout the subsequent interviews with the investigating deputies, [redacted] insisted he experienced back pain but he did not indicate whether the pain was from the fall or the initial beating. [redacted] never described the location of the pain in his back or the symptoms of his pain other than what he told the first responding deputies. [redacted] did not note any markings or bruising on his body as a result of the fall, knees in the back or the apparent kick he received. Instead, he focused his complaints on being pepper sprayed and bringing attention to that conduct.

[redacted] focus on reporting the pepper spraying is consistent with his [redacted] statement to investigators who stated that [redacted] called her the night of the incident and told her he was beat up and pepper sprayed and that he was going to "stage a fall" so that he could receive treatment. [redacted] contacted Lt. Douglas Slaughter and told him [redacted] contacted her and said he was beaten up and pepper sprayed and had "neck pain" because of the assault.

On the day of his alleged back injury, deputies transferred [redacted] to LCMC where he underwent a full examination and he only received Motrin for his apparent injury. In the subsequent weeks and months, [redacted] repeated visits to the medical staff focused on treatment for an unrelated rash and did not focus on residual back pain.

The attitude of the witness toward this action or toward the giving of testimony;
A statement previously made by the witness that is consistent or inconsistent with his testimony;
The character of the witness for honesty or truthfulness or their opposites;
An admission by the witness of untruthfulness;
The witness' prior conviction of a felony.

If it is true that ██████ feigned his back injury, it becomes possible he also fabricated the O.C. spray assault.

Lack of Facial Injuries

On November 7, 2007, Investigators photographed a one half inch scratch, one inch from the right corner of his mouth. ██████ neck and face were also photographed and no other mark is seen. First responding deputies Ahrari and Ruano documented there were no other markings or scratching around ██████ neck and he did not point out any injuries to them on November 6.

Several inmates stated that at the time of the assault, deputies returned ██████ to his cell and they observed his ripped and bruising, or redness, or scratches around ██████ face and neck. Despite these multiple injuries being observed by these witnesses, deputies who documented the injuries on November 6th, and the photographs taken the next day, fail to indicate these described injuries. What is also notable is that ██████ does not have any swelling on his face as a result of being punched 4-10 times by deputies.

Lack of Pepper Spray Injuries

██████ described the liquid from the spray entering his anal cavity and running down his leg towards his testicles. He stated that the pain lasted throughout the night. The next day when he disclosed the assault, he was seen by Dr. Abdelnur and Sgt. Stewart. Both witnesses did not see any apparent redness or injury in the described area.

Potential Evidence is Fabricated.

On October 9, 2007, a major disturbance in ██████ module caused deputies to deploy O.C. spray into the cells of all the inmates in his module. The disturbance lasted for five hours and repeated uses of the spray were necessary. In addition, LASD documented 19 separate uses of O.C. spray in ██████ housing units up until this incident.

██████ did not provide the pepper sprayed boxers at the time he was sprayed or the next day when he was examined by medical personnel. The boxers were collected two days later by Sergeant Estrada who saw ██████ retrieve them from the cell. ██████ alleges he kept the boxers hidden for two days in order to keep them from the assaulting deputies. However, it is possible he kept these boxers from the October 9, 2007, incident in his former housing unit. There is no evidence that the substance on the boxers came from the exact spray can in the possession of any

of the suspected deputies.[11]

Because the substance is used commonly throughout the jail, there could be many sources for the O.C. spray on the boxers that cannot be accounted for by the prosecution. These discrepancies coupled with the informal policy that inmates clean the affected area themselves allows for the possibility that the boxers were soiled with O.C. spray from another day or incident.

Additional Credibility Issues

had made one prior complaint of unlawful use of force by a deputy while in custody at the Pitchess Jail on May 15, 2007. alleged Deputy kicked him while searched him. LASD investigators interviewed who declined to give videotaped interview but repeated the allegations off camera. Investigators reviewed videotape of the incident and saw none of the conduct alleged by They found the incident to be unsubstantiated and did not reprimand the deputy.

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CONCLUSION

The evidence examined in this investigation is insufficient to prove beyond a reasonable doubt that Anthony Pimentel, Davie Chang, and Kris Cordova committed an act of assault under color of authority in violation of Penal Code Section 149. statements and the quality of physical evidence lack the necessary amount of credibility needed to satisfy the burden of proof required. Furthermore, without percipient witnesses, incriminating statements by the accused or other evidence to corroborate claims, the sufficiency of the evidence does not support a prosecution of these deputies. There is no way to determine that the O.C. spray found on the boxers in possession came from a canister in the deputies' possession. Consequently, the People cannot prove beyond a reasonable doubt that Pimentel, Chang, and Cordova assaulted under color of authority.

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[11] Investigators did not determine whether the canisters had been previously used or were completely full.

Based upon the above analysis, we decline to initiate criminal proceedings against LASD deputies Pimentel, Chang, and Cordova. We are closing our file and we will take no further action in this matter.

> **IAB Note: For a copy of the Los Angeles County District Attorney Charge Evaluation Worksheet, refer to the Internal Criminal Investigations Bureau package.**

On October 26, 2010, Internal Affairs Bureau Sergeant Teri Roberts was assigned the administrative investigation.

The following is a summary of the administrative investigation:

SUBJECT INTERVIEWS

DEPUTY ANTHONY PIMENTEL, Employee [redacted], was interviewed on December 9, 2010, by Internal Affairs Bureau Sergeant Teri Roberts and Sergeant Frank Quichocho. Deputy Pimentel was represented by Attorney Deborah Wadleigh from Green & Shinee. The interview took place at Internal Affairs Bureau and was digitally recorded. The following is a summary:

Sergeant Roberts asked Deputy Pimentel to describe the series of events that transpired in Module 241 on November 5, 2007, during the PM shift, at approximately 2045 hours when Inmate [redacted] became upset over some dirty jail blues.

Deputy Pimentel stated Deputy Chang and Deputy Cordova were supervising the linen exchange. Deputy Pimentel was inside the officer's booth of the module when Deputy Cordova told him he suspected an inmate had stolen some blues. Deputy Cordova was a trainee and had only worked the jail for approximately two to three weeks. Deputy Cordova asked Deputy Pimentel how he should handle the issue. Deputy Cordova wanted to conduct a cell search. Deputy Pimentel advised Deputy Cordova that due to it being close to the end of shift, he did not feel they had sufficient time to get the search authorized by a Sergeant.

Deputy Pimentel suggested they walk up and do a visual of the cell for any excess inmate clothing. They would then make a note of it and write the inmate up the following day. Deputy Pimentel informed Deputy Chang, and the three of them approached Inmate [redacted] cell.

While standing in front of the cell, they noticed the lower bunk, which was Inmate [redacted] bunk, had jail-made curtains draped around his bunk, which is a violation of jail rules. Typically, inmates hang curtains for privacy reasons.

The deputies noticed that Inmate [redacted] did in fact possess excess linen. They banged on the cell door and attracted the attention of Inmate [redacted] cell mate, [redacted] who was lying on the top bunk. Inmate [redacted] yelled out to Inmate [redacted] did not respond. Due to the previous inmate assaults within Module [redacted], the deputies felt they should check on Inmate [redacted] welfare.

They entered the cell and removed the curtains to find Inmate [redacted] lying on his bed. They removed Inmate [redacted] and Inmate [redacted] from the cell to talk to them. Inmate [redacted] was escorted to the visiting area by Deputy Chang while Inmate [redacted] was escorted to the outdoor recreation area by Deputy Cordova. Deputy Pimentel stood several feet outside the visiting area to maintain a visual on both deputies.

Deputy Pimentel was told by Deputy Chang that he and Inmate [redacted] discussed the jail rules and Deputy Pimentel asked what [redacted] problem was. Inmate [redacted] stated other inmates have had problems with [redacted] in the past by him causing friction within the dorm.

Deputy Chang spoke with Inmate [redacted] approximately five minutes and escorted him back to his cell.

Deputy Pimentel walked into the outdoor recreation area and saw Inmate [redacted] sitting on the ground in the middle of the outdoor recreation area, approximately ten to fifteen feet from the door entrance, and talking to Deputy Cordova. Deputy Pimentel knew he had minimal time to counsel Inmate [redacted] before placing him back in his cell prior to the next shift coming on.

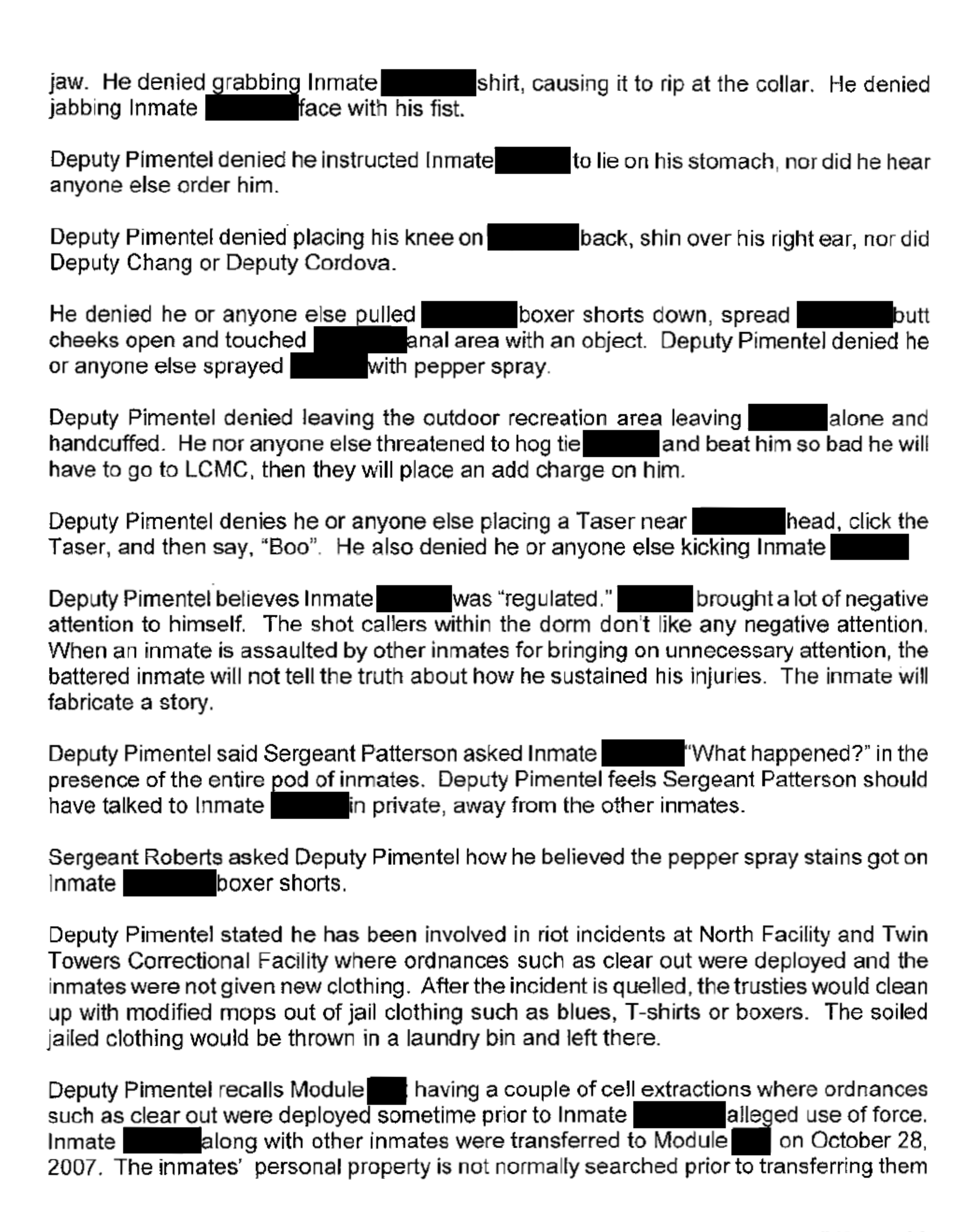
Deputy Pimentel immediately began to counsel Inmate [redacted] on the expectations of the floor and the jail rules, and if he chose not to follow them, he would be written up. Deputy Pimentel wrote Inmate [redacted] booking number in his notebook with the intention of writing him up the next day.

After two or three minutes, Deputy Chang walked into the outdoor recreation area. The three deputies then escorted Inmate [redacted] back to his cell.

The next day, Deputy Pimentel returned on day shift to work his County double. He heard radio traffic regarding a man down in Module [redacted]. When he went to Module [redacted] to start his PM shift, Internal Affairs was there. He was separated from the other deputies and did not know why. He then went home. The following day, he was relieved of duty.

Deputy Pimentel denied telling Inmate [redacted] and Inmate [redacted] that they were going to search their cell.

Deputy Pimentel denied ordering Inmate [redacted] to apologize to Deputy Cordova for any reason. He denied he punched or witnessed anyone else punch Inmate [redacted] in the right



jaw. He denied grabbing Inmate shirt, causing it to rip at the collar. He denied jabbing Inmate face with his fist.

Deputy Pimentel denied he instructed Inmate to lie on his stomach, nor did he hear anyone else order him.

Deputy Pimentel denied placing his knee on back, shin over his right ear, nor did Deputy Chang or Deputy Cordova.

He denied he or anyone else pulled boxer shorts down, spread butt cheeks open and touched anal area with an object. Deputy Pimentel denied he or anyone else sprayed with pepper spray.

Deputy Pimentel denied leaving the outdoor recreation area leaving alone and handcuffed. He nor anyone else threatened to hog tie and beat him so bad he will have to go to LCMC, then they will place an add charge on him.

Deputy Pimentel denies he or anyone else placing a Taser near head, click the Taser, and then say, "Boo". He also denied he or anyone else kicking Inmate

Deputy Pimentel believes Inmate was "regulated." brought a lot of negative attention to himself. The shot callers within the dorm don't like any negative attention. When an inmate is assaulted by other inmates for bringing on unnecessary attention, the battered inmate will not tell the truth about how he sustained his injuries. The inmate will fabricate a story.

Deputy Pimentel said Sergeant Patterson asked Inmate "What happened?" in the presence of the entire pod of inmates. Deputy Pimentel feels Sergeant Patterson should have talked to Inmate in private, away from the other inmates.

Sergeant Roberts asked Deputy Pimentel how he believed the pepper spray stains got on Inmate boxer shorts.

Deputy Pimentel stated he has been involved in riot incidents at North Facility and Twin Towers Correctional Facility where ordnances such as clear out were deployed and the inmates were not given new clothing. After the incident is quelled, the trusties would clean up with modified mops out of jail clothing such as blues, T-shirts or boxers. The soiled jailed clothing would be thrown in a laundry bin and left there.

Deputy Pimentel recalls Module having a couple of cell extractions where ordnances such as clear out were deployed sometime prior to Inmate alleged use of force. Inmate along with other inmates were transferred to Module on October 28, 2007. The inmates' personal property is not normally searched prior to transferring them

to another module.

IAB Note: For a copy of Inmate [redacted] "Inmate Total Movement History", refer to Exhibit B.

Deputy Pimentel never observed Deputy Cordova or Deputy Chang use any type of unreasonable force towards an inmate.

IAB Note: Refer to a copy of Deputy Pimentel's transcribed interview for further details.

DEPUTY DAVIE CHANG, Employee # [redacted], was interviewed on December 9, 2010, by Internal Affairs Bureau Sergeant Teri Roberts and Sergeant Frank Quichocho. Deputy Chang was represented by Attorney Deborah Wadleigh from Green & Shinee. The interview took place at Internal Affairs Bureau and was digitally recorded. The following is a summary:

Sergeant Roberts asked Deputy Chang to describe the series of events that transpired on November 5, 2007, during the PM shift, at approximately 2045 hours when Inmate [redacted] became upset over some dirty jail blues.

Deputy Chang stated Deputy Cordova was in charge of monitoring linen exchange. Deputy Chang indicated he was in the immediate area. Deputy Cordova informed Deputy Chang that an inmate may have taken extra linens. Deputy Cordova advised Deputy Pimentel and they all agreed to go to Inmate [redacted] cell to do a visual observation for excess linen.

When they arrived at the cell, they knocked on the cell door to get Inmate [redacted] attention, who was assigned to the lower bunk. [redacted] cell mate was in the upper bunk. Inmate [redacted] had draped (jail violation) his bunk area with excess linen and they were unable to see him. They received no response from [redacted] They decided to enter the cell to check on Inmate [redacted] welfare. [redacted] was in his bed.

They handcuffed Inmate [redacted] and his cell mate, [redacted] and removed them from their cell to counsel them regarding jail rules. Deputy Chang spoke with Inmate [redacted] in the visiting area and Deputy Cordova talked to Inmate [redacted] in the outdoor recreation area.

Inmate [redacted] told Deputy Chang that Inmate [redacted] is new and doesn't know the jail rules. He said he would explain to Inmate [redacted] what the rules are on the floor. After a five minute conversation, Deputy Chang escorted Inmate [redacted] back to his cell.

Deputy Chang then responded to the outdoor recreation area and met with Deputies Pimentel and Cordova and Inmate [redacted] Deputies Pimentel and Cordova were standing

and Inmate [redacted] was getting up off the floor from a seated position. Deputy Pimentel wrote down Inmate [redacted] booking number in his notebook to write a report for a contraband violation the next day. Deputy Chang was in the outdoor recreation area for approximately one minute when the three deputies proceeded to escort Inmate [redacted] back to his cell. Deputy Chang estimated the time when they first removed Inmate [redacted] from his cell to the time he was escorted back to his cell to be less than ten minutes.

Deputy Chang did not notice that Inmate [redacted] was in any type of discomfort at anytime.

The next morning, Deputy Chang was working module [redacted] with a deputy [redacted] and a Custody Assistant [redacted]. Deputy Chang let out the inmates in E-pod (Inmate [redacted] pod) for their two-hour indoor recreation time to use the phone, watch TV, or shower. At the end of the two hours, approximately 0800 hours, Deputy Chang told the inmates to go back into their cells. He then heard someone say, "Man down, man down!" Deputy Chang saw an inmate (later identified as Inmate [redacted] lying on the ground at the bottom of the stairs and appeared non-responsive.

Deputy Chang walked into the indoor recreation area with the [redacted] deputy and approached Inmate [redacted] They noticed Inmate [redacted] was awake and barely moving his body. Deputy Chang and the deputy [redacted] grabbed Inmate [redacted] and pulled him right outside the door of the recreation area. Deputy Chang believed Inmate [redacted] had been "regulated" by the inmates.

Inmate [redacted] told the deputies that he fell, threw out his back, and fell down the stairs. [redacted] indicated he was really hurt. Deputy Chang did not see any injuries.

Deputy Chang called for a nurse and doctor to respond to the module. The doctor stated Inmate [redacted] was complaining of pain to his back and would call the Paramedics.

Deputy Chang had two [redacted] working with him that needed direction and he had other duties on the floor to tend to such as nurses clinic, doctor's line, court line, and someone to go pick up the chow.

The Senior and Sergeant Patterson arrived. Sergeant Patterson asked Inmate [redacted] what happened. Inmate [redacted] stated he fell down the stairs. Not believing him, Sergeant Patterson kept pressing the issue and asked [redacted] what really happened. Not believing him, Deputy Chang walked away and began tending to his duties.

Deputy Chang then heard Inmate [redacted] tell Sergeant Patterson that some deputies beat him up. Again, Deputy Chang thought to himself, okay, some deputies beat you up, sure, whatever. Deputy Chang continued working the floor.

Deputy Chang stated that on PM shift, he was asked to work another floor. He did not know what was going on, although, he heard a rumor that the investigation was focused

on him. The next day he was relieved of duty.

Sergeant Roberts asked Deputy Chang to provide an opinion as to how the pepper spray stains would have gotten on the boxer shorts.

Deputy Chang explained that during that time period, he recalls inmate disturbances where deputies deployed pepper balls and pepper spray to dispel the fights. The pod would be saturated with the chemical agents. In the aftermath, trusties would use linen, excess clothing including T-shirts and underwear, or whatever they could find to clean up the mess.

It is Deputy Chang's belief the soiled pepper sprayed items were possibly passed onto other inmates within the jail, and were not placed into the laundry bins to be washed.

Deputy Chang stated there was a major breach of security on the fourth floor of Tower II where several pod windows were broken for an undetermined amount of time, possibly for approximately one month. The windows faced Bauchet Street. Excess linen and fish line were confiscated. It is believed that people from outside the jail would hook the contraband to the fish line and it would be pulled into the jail. As a result of the breach, a facility wide search was initiated. Folding knives and other contraband were found believed to have been brought in from the outside.

> **<u>IAB Note</u>: For documentation regarding the security breach of the facility, refer to Exhibit C.**

Deputy Chang stated crushed up hoarded pepper balls were also found, which may not have been picked up and thrown out by trusties during a clean-up after a riot incident. Deputy Chang stated that when a pepper ball gun deploys pepper balls, not all of the balls explode on impact, depending on the contact surface.

Deputy Chang recalls approximately one month or two prior to Inmate [redacted] allegation, a deputy found a carton of pepper ball agents in Module 240, which he suspected they were going to use against deputies or other inmates.

Deputy Chang stated that it is procedure for any inmate who is being moved from one module to the next to be searched along with their personal belongings. When the inmates from Module [redacted] D-pod, E-pod, and F-pod were moved to Module [redacted] on October 28, 2007, approximately two weeks or less prior to the alleged incident, they were not searched. These inmates are required to be handcuffed anytime they are moved. Due to the inmates moving from one side of the Towers to the other side, on the same floor, and to facilitate the move efficiently, the inmates were told to gather their personal belongings and walk through a passageway or walkway to the next module. The line of inmates walked through doors that were automatically popped open by the booth officer, then the inmates proceeded to their cell. Handcuffing each inmate, searching their person and

personal property would have been more time consuming.

Deputy Chang denied he or Deputy Pimentel order [redacted] to apologize to Deputy Cordova. Deputy Chang denied punching [redacted] in the right jaw, and did not see Deputy Pimentel grab [redacted] shirt causing it to rip at the collar.

Deputy Chang denied jabbing [redacted] in the face. He denied he or anyone else instruct [redacted] to lie on his stomach.

Deputy Chang denied he or anyone else place their knee on Inmate [redacted] back and shin over his right ear. He denied he or anyone else pulled [redacted] boxer shorts down, spread [redacted] buttocks open, touched [redacted] anal area with an object and pepper sprayed him.

Deputy Chang denied he or anyone else left [redacted] in the outdoor rec area on the ground, handcuffed.

Deputy Chang denied he or anyone else tell [redacted] they were going to hog tie him and beat him up so bad he would need to go to LCMC, then throw an add charge on him.

Deputy Chang denied he or anyone else placed a Taser near [redacted] head and make a clicking noise, then say, "Boo." He denied he or anyone else kicked [redacted]

Deputy Chang has never seen Deputy Cordova or Deputy Pimentel ever use any kind of unreasonable force against an inmate.

IAB Note: Refer to a copy of Deputy Chang's transcribed interview for further details.

KRIS CORDOVA was interviewed on November 22, 2010, by Internal Affairs Bureau Sergeant Roberts at Walnut Sheriff's station. Cordova stated he was a deputy sheriff [redacted] at the time of the alleged incident. He was released from the Sheriff's Department on November 19, 2008, as a result of this allegation. Cordova elected to resign.

Cordova voluntarily met with Sergeant Roberts to provide any information that may assist in the investigation to clear up, what he believed, were false allegations made against him, Deputy Pimentel and Deputy Chang. The interview was digitally recorded and the following is a summary:

Sergeant Roberts asked Cordova to describe the series of events that transpired on November 5, 2007, during the PM shift, at approximately 2045 hours when Inmate [redacted] became upset over some dirty jail blues.

Cordova stated he was new and had been working at Twin Towers Correctional Facility for approximately one month. He was assigned to the PM shift in Module and had been working with Deputy Chang, Deputy Pimentel and the booth officer, Custody Assistant Vance Roque for approximately two weeks.

Cordova stated that the afternoon of November 5, 2007, he assisted Deputy Chang with linen exchange. They were in E-Pod when Inmate approached Deputy Cordova complaining that his new set of blues were dirty or smelled bad, and asked for a new set. Deputy Chang told Deputy Cordova to give another set. Inmate was given another set and walked away.

returned and again advised Deputy Cordova that his blues smelled. Deputy Cordova told Inmate that he was not going to help him and to take it back in. Deputy Cordova walked away to the officer's booth to start the linen exchange in F-Pod. When Deputy Cordova turned back around, he noticed Inmate walking back to his cell. The blues that were in the door flap were also gone.

Deputy Cordova told Deputy Chang and Deputy Pimentel that he believed Inmate had taken extra blues. Deputy Pimentel suggested they do a visual of cell for excess linen at the conclusion of linen exchange.

Deputies Cordova, Chang and Pimentel approached Inmate cell and saw cell mate lying on the top bunk. They were unable to see the lower bunk due to a make-shift curtain made from sheets that was draped around the bunk. The draped curtain is a violation of jail rules.

Deputy Chang or Deputy Pimentel knocked on the door a couple of times and called out name. There was no response.

They popped open the cell door and again yelled out name. either pulled the sheets open or removed them and shrugged his shoulders, as if he didn't know what was going on. Inmate was wearing a T-shirt and boxers.

The deputies decided to pull both inmates out of the cell to find out what they were doing. Inmate was told to get out of bed, interlace his fingers and walk backwards to the cell door. Deputy Cordova handcuffed Inmate at the door and escorted him to the outdoor recreation area. He told Inmate to sit down on the floor and face the outdoor rec caged windows.

Deputy Chang or Deputy Pimentel handcuffed Inmate and escorted him to the visiting area. Deputy Chang spoke with as Deputy Pimentel stood in the doorway to the outdoor rec to maintain a visual on Deputy Cordova in the outdoor rec and Deputy Chang in the visiting area.

Cordova stated he asked Inmate [redacted] what the deal was with the blues, and what was going on with the sheets.

Inmate [redacted] would not respond and appeared to be upset over them not allowing him to put his shoes on.

Cordova said he told Inmate [redacted] to "get your shit together and stay low key." He told [redacted] "Because you know, if you cause trouble for yourself, you're going to cause it for yourself by your cell mates and then you're going to get it caused by the deputies."

Deputy Cordova left Inmate [redacted] on the floor and closed the outdoor rec door behind him to assist Deputy Chang and Deputy Pimentel in escorting Inmate [redacted] back to his cell. Cordova stated Inmate [redacted] was left in the outdoor rec area for approximately five to ten minutes.

> **IAB Note: Inconsistent statement - Both Deputy Pimentel and Deputy Chang denied that Inmate [redacted] was left in the outdoor recreation area by himself, handcuffed.**

Deputy Cordova said he asked Inmate [redacted] "Hey, what's the deal with your cellie?" Inmate [redacted] responded, "He's a hot head, he's young you know, don't worry about it, we'll take care of it."

Cordova said he didn't know what Inmate [redacted] meant by, "We'll take care of it."

Deputy Cordova, Deputy Pimentel and Deputy Chang returned to the outdoor recreation area. Deputy Cordova helped Inmate [redacted] to his feet and they all escorted [redacted] back to his cell without incident.

The deputies did not ask Inmate [redacted] if they were going to have any further problems with him. Cordova stated he might have asked [redacted] where he was from, which is a common question he asks of all inmates he speaks with. Cordova said he, for the most part, was the only deputy who conversed with Inmate [redacted]

Cordova denied threatening to hog tie Inmate [redacted] and beat him so bad he was going to have to go to LCMC.

Cordova denied seeing Deputies Pimentel and Chang ever hit an inmate. He adamantly denied touching Inmate [redacted] in a sexual manner, nor did he see Deputy Pimentel or Deputy Chang touch Inmate [redacted] in an inappropriate manner. Cordova said there was no pepper spray deployed towards Inmate [redacted] nor did anyone activate the Taser, making a clicking noise to intimidate Inmate [redacted] None of the deputies had a Taser in their possession.

Deputy Cordova denied yanking Inmate [redacted] shirt.
He denied telling [redacted] to lie on his belly.
He denied placing his knee on [redacted] back.

Sergeant Roberts asked Cordova to provide an opinion as to how Inmate [redacted] sustained his injuries.

Cordova stated that sometimes an inmate is beaten up by other inmates. A common place for an inmate to be assaulted at Twin Towers Correctional Facility is underneath the stairwells.

The next day when Inmate [redacted] reported the alleged incident, [redacted] had his two hours of day room time, and then at the very end, he went "man down." Inmate [redacted] reported he injured his back when he fell down the stairs, which is a common explanation inmates provide after they've been assaulted by other inmates.

Cordova stated when a Senior or Sergeant responds to the scene of an inmate down, they ask the inmate, "What happened?" The inmate states he fell down the stairs. The Senior or Sergeant say, "No, what really happened?" The inmate repeatedly says he fell down the stairs. In the presence of other inmates, the Senior or Sergeant continues to ask the inmate what really happened. The inmate is not going to "snitch" on the inmates who jumped him and has no recourse but to say that deputies beat him.

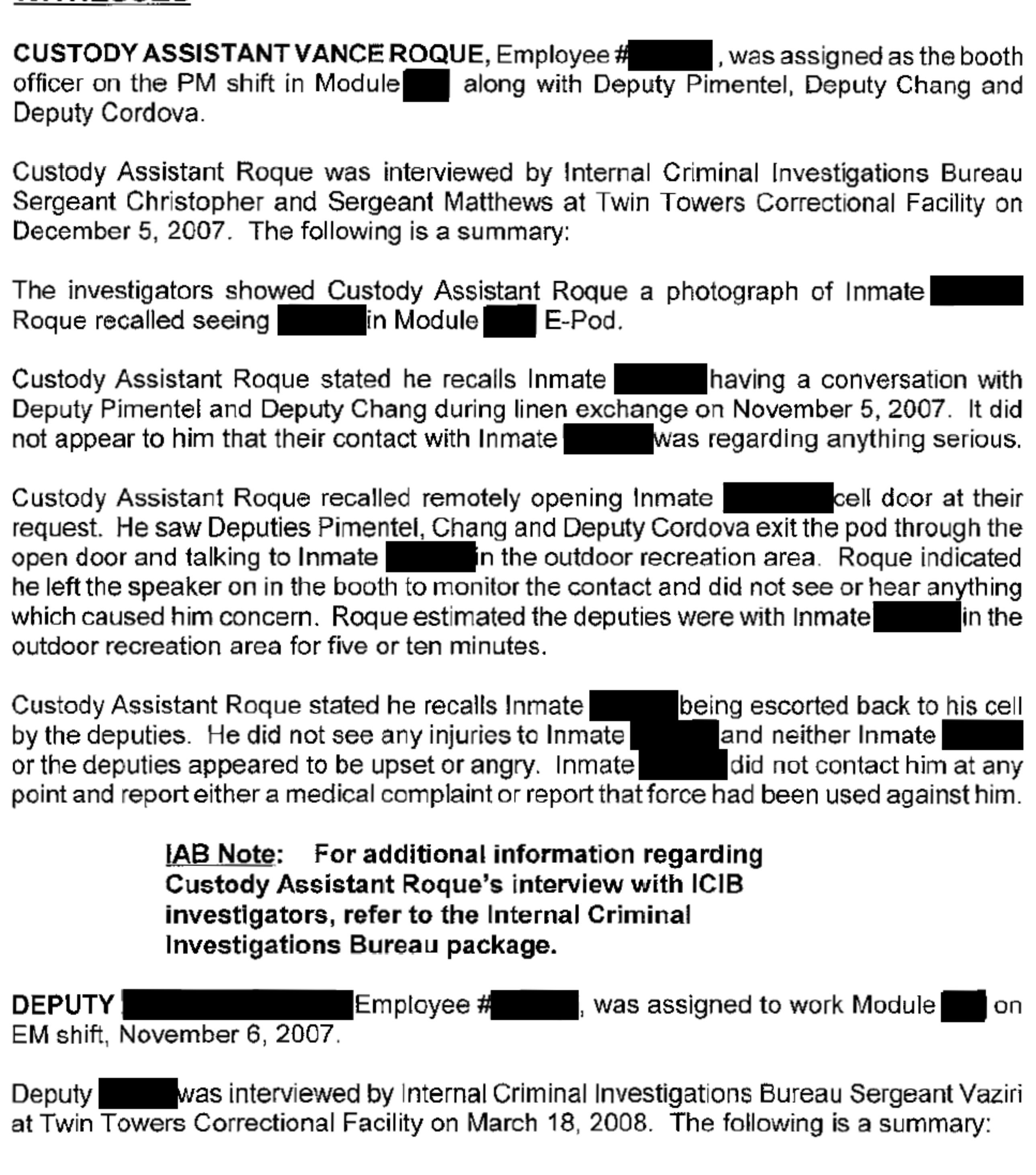
Sergeant Roberts asked Cordova to provide an opinion as to how pepper spray stains would have gotten on the boxer shorts.

Cordova stated Module [redacted] had a riot the month before where deputies found pepper ball residue inside baby powder. After a riot incident, trusties clean up the residue from the aftermath deployment of less lethal weapons, with whatever rags (clean or dirty linen, including T-shirts and boxers) they can find. Trusties also pass items to other inmates.

Inmate [redacted] was transferred from Module [redacted] to Module [redacted] on October 25, 2007. Cordova had extra linen and could have hid the soiled boxers in his cell, then took them with him when he transferred to Module [redacted]

Cordova stated the short time he worked with Deputy Pimentel and Deputy Chang, he never witnessed them use unreasonable force toward an inmate. Cordova said he has a family, and at the time, he was only concerned with passing probation. If a deputy would have wanted him to be involved in abusing an inmate, he would have reported it to his Sergeant or Senior.

Cordova adamantly denies Inmate [redacted] allegations and does not know his motive for the false allegations.



IAB Note: Refer to a copy of Kris Cordova's transcribed interview for further details.

WITNESSES

CUSTODY ASSISTANT VANCE ROQUE, Employee # , was assigned as the booth officer on the PM shift in Module along with Deputy Pimentel, Deputy Chang and Deputy Cordova.

Custody Assistant Roque was interviewed by Internal Criminal Investigations Bureau Sergeant Christopher and Sergeant Matthews at Twin Towers Correctional Facility on December 5, 2007. The following is a summary:

The investigators showed Custody Assistant Roque a photograph of Inmate Roque recalled seeing in Module E-Pod.

Custody Assistant Roque stated he recalls Inmate having a conversation with Deputy Pimentel and Deputy Chang during linen exchange on November 5, 2007. It did not appear to him that their contact with Inmate was regarding anything serious.

Custody Assistant Roque recalled remotely opening Inmate cell door at their request. He saw Deputies Pimentel, Chang and Deputy Cordova exit the pod through the open door and talking to Inmate in the outdoor recreation area. Roque indicated he left the speaker on in the booth to monitor the contact and did not see or hear anything which caused him concern. Roque estimated the deputies were with Inmate in the outdoor recreation area for five or ten minutes.

Custody Assistant Roque stated he recalls Inmate being escorted back to his cell by the deputies. He did not see any injuries to Inmate and neither Inmate or the deputies appeared to be upset or angry. Inmate did not contact him at any point and report either a medical complaint or report that force had been used against him.

IAB Note: For additional information regarding Custody Assistant Roque's interview with ICIB investigators, refer to the Internal Criminal Investigations Bureau package.

DEPUTY Employee # , was assigned to work Module on EM shift, November 6, 2007.

Deputy was interviewed by Internal Criminal Investigations Bureau Sergeant Vaziri at Twin Towers Correctional Facility on March 18, 2008. The following is a summary:

Sergeant Vaziri showed Deputy [redacted] a photograph of Inmate [redacted] Deputy [redacted] stated he did not recognize [redacted]

Deputy [redacted] stated he does not recall any inmate during wristband count request to see a doctor because he had been involved in an "incident." Deputy [redacted] also does not recall looking at Inmate [redacted] cell mate, and he (cell mate) showing his hands as proof that he had not been involved in a fight with Inmate [redacted] said he had no contact or conversation with Inmate [redacted] or his cell mate.

Deputy [redacted] indicated the medical staff is available on EM shift and he would have escorted Inmate [redacted] to the clinic.

> <u>IAB Note</u>: **For additional information regarding Deputy [redacted] interview with ICIB Sergeant Viziri, refer to the Internal Criminal Investigations Bureau package.**

COOPER KUNATH, a Los Angeles City Fire Paramedic was deposed on May 13, 2010 in preparation for Inmate [redacted] civil court trial. Paramedic Kunath responded to Twin Towers Correctional Facility with his partner EMT Danny Bowman on a call regarding an inmate complaining of lower back pain. The following is a summary:

Inmate [redacted] reported to Paramedic Kunath that he was walking when his back froze up. While assessing [redacted] Paramedic Kunath noted no tingling or numbness to [redacted] extremities, and he had no other medical complaints.

> <u>IAB Note</u>: **For a copy of the Emergency Medical Service Report (902M) for Inmate [redacted] refer to Exhibit D.**

Inmate [redacted] did not disclose he had been assaulted by deputies or pepper sprayed. He did not complain to Paramedic Kunath that he was experiencing burning to his genital area.

Paramedic Kunath stated if Inmate [redacted] would have stated he was "pushed around by deputies" or he was experiencing burning to his genitals, he (Kunath) would have documented it on the service report.

"Non-trauma " was checked on the service report due to Inmate [redacted] experiencing the onset of the symptom while he was walking. "Trauma" would have been checked if [redacted] had reported he had been assaulted.

Paramedic Kunath was asked, "If Inmate [redacted] told you he was abused, would you take any action?"

Paramedic Kunath stated, "If it was inappropriate, it would be documented."

Paramedic Kunath was asked what the symptoms would be on a person that had been pepper sprayed. Kunath indicated the person would have watery eyes, mucous emitting from the nose, eyes shut, burning to the face and eyes, be "squirmy" and uncomfortable.

Paramedic Kunath stated he observed no bruising to Inmate [redacted] face. If there was bruising, he (Paramedic Kunath) would have noted it on the service report and asked [redacted] how he sustained the bruises. If Inmate [redacted] had stated that he was assaulted by deputies, a notation would have been made on the service report and notification made to the Fire Captain.

Paramedic Kunath stated if Inmate [redacted] had reported a fall, he would have checked "blunt back" under trauma on the patient form. It would not have been categorized as "non-traumatic back pain."

Paramedic Kunath stated if Inmate [redacted] would have reported that he was pepper sprayed the day before and it was painful, but it was not bothering him at the time of the assessment, he (Kunath) would still have documented it on the service report.

Paramedic Kunath did not document on the service report that Inmate [redacted] was not able to get up because the level of his pain severity was mild. If there was any indication Inmate [redacted] was in serious pain, he (Kunath) would have placed a call to the hospital to order morphine for pain control.

> **<u>IAB Note</u>: For further details on Paramedic Kunath's deposition, refer to the CD in Exhibit E.**

DANNY BOWEN, a Los Angeles City Fire Emergency Response Technician (EMT) was deposed on May 13, 2010, in preparation for Inmate [redacted] civil court trial. EMT Bowen responded to Twin Towers Correctional Facility with his partner Paramedic EMT Danny Bowman on a call regarding an inmate complaining of lower back pain. The following is a summary:

Inmate [redacted] reported to Paramedic Kunath that he was walking when his back froze up. Inmate [redacted] had good movement to all extremities. He was able to move his hands and his feet. There was no chance of a spinal column injury. EMT Bowen stated if Inmate [redacted] was experiencing so much pain that he could not get up, it would have reflected in the service report.

Inmate [redacted] did not state he fell. [redacted] would have been asked how long he had the pain for or when he felt the onset of the pain. [redacted] response was two days. "Chronic" is considered as having the complaint for a few days. His complaint appeared to be more of a chronic issue which is associated with a disk problem, such as a bulging disk. They would have asked [redacted] the intensity level of his pain by using a pain scale to determine whether morphine should be administered. No morphine was given. There were no other

medical complaints.

EMT Bowen stated if Inmate [REDACTED] had a traumatic injury, he would have been treated. They would have immobilized his spine by placing him on a backboard, and secured his head and neck to eliminate any movement of the spinal column.

If Inmate [REDACTED] would have told the Paramedic that he was assaulted the day before, it would have been documented on the patient report.

If Inmate [REDACTED] would have told the Paramedic that he was pepper sprayed the day before, it would not have been documented on the service report because it was not conclusive with his complaint of back pain. However, if [REDACTED] would have complained of pain related to the pepper spray, it would have been documented on the service report. In addition, if [REDACTED] said he was pepper sprayed in his genitals and he was suffering discomfort, it would have been noted in the report.

EMT Bowen indicated if Inmate [REDACTED] complained that he was abused, especially if it was related to the incident, or thought it was related to the incident, it would have been documented.

EMT Bowen was asked what the symptoms would be on a person that had been pepper sprayed. Bowen indicated the person would be choking, have watery eyes, difficulty breathing, coughing, burning of the eyes, salivation, skin is pale and cool, feeling agitated or upset and being squirmy.

> **IAB Note: For further details on EMT Bowen's deposition, refer to the CD in Exhibit E.**

SERGEANT TRACY STEWART, Employee [REDACTED], was assigned to work the jail ward at Los Angeles County Medical Center on day shift, November 6, 2007.

Sergeant Stewart was interviewed via telephone by Internal Criminal Investigations Bureau Sergeant Vaziri on January 9, 2008 and Sergeant Petz on March 9, 2008. The following is a summary:

Twin Towers Correctional Facility Sergeant Patterson contacted Sergeant Stewart by telephone and told her that Inmate [REDACTED] had alleged that deputies had assaulted him, and during the assault, he was pepper sprayed on his buttocks and genitalia. Sergeant Patterson asked that she confer with the treating doctor to determine if [REDACTED] injuries were consistent with his allegation. Sergeant Stewart had Deputy Ruano act as an interpreter as she spoke with Inmate [REDACTED]

Sergeant Stewart authored a memorandum **(refer to Exhibit F in the ICIB package)** to Sergeant Patterson at Twin Towers Correctional Facility documenting her observations and

the facts reported to her by LCMC Deputy Ruano regarding Inmate [redacted] allegations.

Sergeant Stewart stated she and the attending physician, Dr. Diego R. Abdelnur, saw a small one inch scratch to the right side of Inmate [redacted] neck and two to three scratches to the right side of his neck. There were no other injuries. Neither Sergeant Stewart or Dr. Abdelnur saw any redness to Inmate [redacted] buttocks or penis.

> **<u>IAB Note</u>: For additional information regarding Sergeant Stewart's telephonic interview with ICIB Sergeant Viziri and Sergeant Petz, refer to the Internal Criminal Investigations Bureau package.**

DEPUTY SANTOS RUANO, Employee # [redacted], was assigned to work the jail ward at Los Angeles County Medical Center on day shift, November 6, 2007.

Deputy Ruano was interviewed by Internal Criminal Investigations Bureau Sergeant Vaziri at Los Angeles County Medical Center on January 9, 2008. The following is a summary:

Sergeant Vaziri showed Deputy Ruano a photograph of Inmate [redacted] Deputy Ruano stated he did recognize Inmate [redacted]

Deputy Ruano said while Inmate [redacted] was at the jail ward, he was directed by Sergeant Stewart to speak with Inmate [redacted] to obtain further details regarding the alleged incident by deputies.

Deputy Ruano stated Inmate [redacted] told him that three deputies had pepper sprayed his "rear end" and was complaining of some injuries related to it. Deputy Ruano said Inmate [redacted] complained that his "rear end" was burning.

> **<u>IAB Note</u>: For additional information regarding Deputy Ruano's interview with ICIB Sergeant Viziri, refer to the Internal Criminal Investigations Bureau package.**

DR. DIEGO R. ABDELNUR, was working in the emergency room at the Los Angeles County Medical Center on day shift, November 6, 2007 and examined Inmate [redacted]

Dr. Abdelnur was interviewed by Internal Criminal Investigations Bureau Sergeant Vaziri at Los Angeles County Medical Center on March 19, 2008. The following is a summary:

Sergeant Vaziri showed Dr. Abdelnur a photograph of Inmate [redacted] Dr. Abdelnur stated he did not recall Inmate [redacted]

Dr. Abdelnur said he did not recall any inmate telling him about being pepper sprayed and

did not recall looking at an inmate's genitals for that reason. He stated an examination of a person's genitals is sometimes necessary when a person complains of a back injury, but he would have made a notation in his notes that the inmate's genitals were examined. Dr. Abdelnur said he would have also made a notation if the inmate complained of pain or discomfort as a result of being pepper sprayed.

According to Inmate [redacted] emergency room report, Dr. Abdelnur did not document that he had examined Inmate [redacted] genitals or that the inmate complained of pain as a result of being pepper sprayed.

> **IAB Note: For additional information regarding Dr. Abdelnur's interview with ICIB Sergeant Viziri, refer to the Internal Criminal Investigations Bureau package.**

[redacted] **(Inmate** [redacted]) was interviewed telephonically by ICIB Sergeant Viziri on February 22, 2008. The following is a summary:

[redacted] stated Inmate [redacted] contacted their [redacted] [redacted] on November 6, 2007 at approximately 0700 hours and told her he had been beaten up pretty bad by a couple of deputies and was being deprived of medical attention. He told [redacted] that he was going to stage a fall at approximately 0800 hours that day to obtain medical attention. [redacted] said [redacted] called her after she was finished talking to Inmate [redacted] and told her what occurred.

[redacted] believed [redacted] would not talk to investigators because she did not want to be involved.

> **IAB Note: For additional information regarding [redacted] interview with ICIB Sergeant Viziri, refer to the Internal Criminal Investigations Bureau package.**

[redacted] was deposed on April 21, 2010, in preparation for Inmate [redacted] civil court trial. The following is a summary:

[redacted] stated her sister [redacted] told her that Inmate [redacted] was physically beaten by three deputy sheriffs and was deprived of medical attention. Because the deputies threatened him, he was going to feign a fall and say he hurt himself so he could obtain medical attention.

[redacted] said she contacted the Chaplain (Dennis Gibbs) and requested that he check on Inmate [redacted] The Chaplain contacted [redacted] and told her that he visited Inmate [redacted] and saw that he was "beaten up pretty badly."

immediately contacted Sheriff Baca's office and left a message asking why three of his deputies beat her brother. She later received a call from an investigator who was going to conduct the internal investigation.

then contacted an , and told him about the situation. visited Inmate one or two days after the alleged incident. He told that Inmate was "beaten up pretty bad." told her that Inmate had been pepper sprayed in his private parts.

said she went to visit Inmate the following weekend and noticed he still had a mark on his face and also a scratch and a bruise with redness on the left side of his face.

> **IAB Note: Inconsistent statement - Inmate did not report any injuries to the left side of his face at the time of the alleged incident, nor was there any documentation at LCMC, or when investigators interviewed on November 7, 2007.**

Inmate told , "They fuckin pepper sprayed my ass", referring to the three deputies. indicated she went to the jail to see if Inmate was okay and to show him support. She did not recall most of the ten to fifteen minute conversation she had with him.

stated she wanted to initiate legal action against the County of Los Angeles, for personal satisfaction, not for monetary compensation, and was hoping she could convince Inmate to pursue it. Inmate responded by saying, "Fine, whatever."

> **IAB Note: For further details on deposition, refer to the CD in Exhibit E.**

(Inmate sister) was deposed on April 21, 2010, in preparation for Inmate civil court trial. The following is a summary:

stated she received a call from Inmate between 8:30-9:00a.m. the morning after the alleged incident. He told her that three deputies had beaten him up and that he had bruises on his neck and back. He said he was going to go man-down and say he could not walk so he could get the medical attention he needs because he was not getting it. said she did not remember Inmate telling her that he had been pepper sprayed.

said her brother gave her the names of the involved deputies. She was sure that the last name of one deputy began with a "W (possibly ." He described the male as Asian. told her, "You make sure and write that name down because

that's the asshole who initiated the beating."

Inmate then told her, "And the other one, I'm not sure if his name is one or the other." He was not sure if it was .

Inmate told her if she doesn't hear from him, he wants her to call the Human Rights Activists. He told her to call the news, call the paper, do what she has to do to get his story out and publicized.

> **IAB Note: Inconsistency - portrayed in her deposition that Inmate was not interested in publicizing or pursuing a lawsuit by saying, "Fine. Whatever" to suggestion in pursuing the matter legally.**

then called her sister, and told her about Inmate phone call.

stated the only thing Inmate complained to her about was the bruises on his neck and his back. said she did not visit Inmate at the jail.

> **IAB Note: Inconsistent statement - In the civil court trial transcript, Inmate stated he told that he was pepper sprayed.**

> **IAB Note: For further details on deposition, refer to the CD in Exhibit E.**

(Inmate , was deposed on May 21, 2010 in preparation for Inmate civil court trial. The following is a summary:

stated she received a call from who said she received a phone call from Inmate telling her he was beaten by the cops and pepper sprayed.

> **IAB Note: Inconsistent statement - According to deposition, said she does not recall speaking with about the incident.**

said he was in the hospital and that he was fine. She said he needed help and wanted her) involved. said did not tell her where Inmate was pepper sprayed.

told that went to see an attorney and that they or Inmate girlfriend would call her.

stated she received a phone call from Inmate whose name was . The told her not to worry, that she got it taken care of. She said Inmate will talk to her when he is released from jail. stated she did not visit Inmate in jail.

spoke with Inmate the day after he was released. She asked what happened. Inmate told her not to worry about it. He said they just beat him.

She asked him where he was pepper sprayed. Inmate said he did not want to talk about it and that he is taking care of it.

Approximately one week later, Inmate discussed the incident with husband, . then told her what had happened.

stated her and Inmate were close. She practically raised him. He went to live with her on and off for a couple of months since the age of sixteen because their did not want to deal with him. said she would lecture him like a second .

stated she has not been able to get Inmate to talk to her about the incident. He tells her it is embarrassing for him. He complained to her about his back pain and attributed it to the incident.

indicated Inmate has changed. He has difficulty sleeping at night and does not interact with people the way he used to.

said her family have personal differences between them. Besides talking about Inmate incident, she has not spoken to in years and in five years.

> **IAB Note: For further details on deposition, refer to the CD in Exhibit E.**

On November 7, 2007, Sergeant Patterson interviewed the inmates in Module E-Pod to locate any witnesses pertaining to Inmate assault. The following is a brief summary of those inmates who provided pertinent information:

was Inmate cell mate. stated the deputies took from their cell. When returned, he complained his neck hurt. saw red marks on the right side of neck. The following day, said his neck still hurt and fell out.

saw the deputies escort Inmate out of E-Pod wearing only boxer shorts.

saw the deputies return the inmate to his cell with "ripped up" clothing.

saw Inmate escorted away by deputies with his hands behind his back wearing a T-shirt and boxers. He did not see return.

saw Inmate taken out of his cell handcuffed by deputies wearing a T-shirt and underwear. When returned, Inmate saw his ripped shirt. Deputy Chang was one of the deputies and was wearing black gloves.

saw Inmate leave his cell wearing a T-shirt and blue pants. was escorted beyond the staging area doors and returned one hour later.

saw the deputies who conducted the linen exchange take Inmate out of E-Pod wearing a T-shirt and jail blues.

was at the top of the stairs when he saw Inmate at the bottom of the stairs become dizzy as a result of him being "whooped by the police." The day before, he saw the deputies take Inmate out of E-Pod and into the gym area wearing a T-shirt and boxers. When Inmate returned to his cell, Inmate saw T-shirt torn and scratches on his neck.

saw the deputies take Inmate and Inmate out of E-Pod. returned to his cell in 5 minutes and returned in 30 minutes. Inmate saw that Inmate was "beat up" and wearing only boxers and a "ripped up" T-shirt. had bruises on his neck, chin, and the left side of his face and neck. Inmate said Inmate told him the next morning that the deputies hit him a few times and took him back to his cell.

saw Inmate and Inmate taken out of E-Pod. One of the inmates returned quickly and the other inmate returned in 1 hour. Inmate cell mate, told that one of the inmate's shirt was torn.

said he heard Inmate ask Deputy Pimentel for different sized clothing during linen exchange. Inmate saw Deputies Pimentel, Chang and another deputy take out of E-Pod. When returned, saw that his shirt was torn and his neck was red.

> **<u>IAB Note</u>: When ICIB Sergeant Vaziri interviewed at his home on February 6, 2008, regarding his (alleged assault by Deputies Chang and**

Pimentel. ██████ stated Deputy Pimentel, Chang and ██████████ was not working that day) took Inmate ██████ out of his cell. Approx. 15 minutes later, ██████ returned. ██████ said he was attracted by the odor of pepper spray. ██████ saw ██████ face was red, shirt ripped, and his chest was red. Later, ██████ told ██████ that he was slapped around and pepper sprayed up his buttocks.

<u>IAB Note</u>: For further details on the inmates who were interviewed by Sergeant Patterson on video, refer to the CD in Exhibit E.

██████████ was deposed on April 20, 2010, in preparation for his civil court trial. The following is a summary:

Mr. ██████ stated the deputies were conducting linen exchange in his Pod. He picked up a clean set of jail blues and returned to his cell. When he changed into his T-shirt and jail pants, he detected a foul odor and determined it was his pants. He approached the deputy (described as heavyset, 200 pounds, 508), whose name he was unable to remember, and told him that the pants smelled and asked for a new pair. The deputy exchanged them.

██████ said he went back to his cell and noticed that his jail blue shirt smelled. He ran back downstairs and told the deputy that his shirt smelled as well. The deputy said, "What do you think I am some kind of bitch? You are trying to get over on me." ██████ told him that they smelled.

The deputy said, "Shut the fuck up and take it back down." ██████ threw the shirt on the floor and said, "Fuck." He then went up the stairs to his cell and began reading his book.

Approximately 45 minutes later, three deputies approached his cell and announced they were conducting a random cell search. He was instructed to walk backwards with his hands behind his head or behind his back and then handcuffed. ██████ was wearing a T-shirt and boxers only. One deputy escorted ██████ down the stairs and into the staging area while the other two deputies were with his cell mate, ██████ They arrived in the staging area shortly thereafter. Inmate ██████ saw one trusty in the staging area.

██████ saw Inmate ██████ being escorted toward the visiting area as one deputy escorted him into the outdoor recreation area. When one deputy instructed ██████ to sit down, he noticed all three deputies in the rec area. ██████ sat on the floor facing the glass windows with his legs out. The Asian deputy was on ██████ right side facing ██████ and the short Hispanic deputy was on ██████ left side facing ██████

said the heavyset deputy in front of him was doing most of the talking. He asked why he threw the shirt and threw a tantrum, and that "everybody is going to think they can get away with it." He then asked why he dropped the "F" bomb?

After that, heard another deputy repeatedly say, "Apologize to the deputy." then heard the clicking noise of a Taser. The short deputy to the left of him was holding the Taser in his hand.

> <u>IAB Note</u>: **Inconsistent statement - During IAB Sergeant Harris' interview of Inmate on 11-07-07, Inmate made no mention of a Taser clicking while they talked to him in the outdoor recreation area.**

> <u>IAB Note</u>: **Inconsistent statement - In the civil court trial transcript, Inmate testified that he was punched by Deputy Pimentel and Deputy Chang prior to them telling him to apologize.**

stated the Asian deputy first punched him on the left side of his face, then said it was the right side of his face. stated the short deputy then punched him on the other side of his face. He was punched 4-10 times more. The short deputy also "yanked" his T-shirt and ripped it, causing a "burn mark" on his neck.

> <u>IAB Note</u>: **Inconsistent statement - During IAB Sergeant Harris' interview of Inmate on 11-07-07, Inmate stated Deputy (Chang) punched or "jabbed" him twice in the right jaw. did not state Deputy Pimentel had punched him.**

> <u>IAB Note</u>: **Inconsistent statement - During ICIB Sergeants Christopher and Matthews interview of Inmate on 11-20-07, Inmate stated Deputy Chang punched him 2-3 times on his right jaw. did not state Deputy Pimentel (short deputy) had punched him.**

> <u>IAB Note</u>: **Inconsistent statement - In the civil court trial transcript, Inmate testified that the collar on his T-shirt did not rip.**

IAB Note: Inconsistent statement - In the civil court trial transcript, Inmate testified Deputy Pimentel had his Taser out and that "every now and then" he would click the Taser which made an electronic noise.

The short deputy grabbed his left arm, held him down, and helped him onto his belly. said he felt a kick or a punch 1-3 times on his right shoulder area. While face down on the floor, felt a knee drop onto his left mid lower back and believed it was the short deputy. He then felt another knee drop onto the left side of his neck.

said he felt his boxer shorts get pulled down and his buttocks was separated. He felt a pen or finger object move in a circular motion around his anal cavity then heard a hissing noise for approximately ½ second to a second. He felt liquid run down from his anal cavity down to his testicles. He felt a warming sensation in these areas followed by a burning sensation. said he did not smell the odor of pepper spray. He did not have trouble breathing and there was no effect on his eyes, nose, ears or other parts of his body.

IAB Note: Inconsistent statement - In the civil court trial transcript, Inmate testified he felt someone's hand open his buttocks.

IAB Note: Inconsistent statement - In the civil court trial transcript, Inmate testified that it was his belief Deputy Chang used his hand to open buttocks due to his positioning.

After he felt the burning sensation, he heard a voice on the radio say, "Court returnees, court returnees." then felt the knees lifted off his neck and back.

The deputies left the outdoor recreation area. Still handcuffed, got up on his knees and saw the deputies walk through the staging area toward the outdoor recreation area on the other side. said his boxers were halfway down his legs.

IAB Note: Inconsistent statement - During ICIB Sergeants Christopher and Matthews interview of Inmate on 11-20-07, Inmate stated when the deputies left the outdoor recreation area, they told Inmate to remain on his stomach for 5-10 minutes.

In the civil court trial transcript, Inmate [redacted] testified that the deputies said nothing to him when they left the outdoor recreation area.

[redacted] then saw the heavyset deputy walk into the officer's station. The heavyset deputy walked out of the station, looked in [redacted] direction and smiled. [redacted] became upset.

After a few minutes, the deputies walked back into the outdoor recreation area and helped [redacted] up. He does not recall when his boxers were pulled up.

The deputies then began to converse with [redacted] about the area he grew up in. One deputy told [redacted] "You know, this is our floor. Comments like that -- we do whatever we want."

[redacted] stated the burning sensation where he was pepper sprayed began to get worse.

The short deputy then said, "You so much take your -- stick your nose out that tray slot or ask me for something, I'm going to beat your ass so severely your, I'm going to send you to LCMC and give you an add charge."

<u>IAB Note</u>: Inconsistent statement - During IAB Sergeant Harris' interview of Inmate [redacted] on 11-07-07, Inmate [redacted] stated the deputies told him, "Next time, you ([redacted] will be going to LCMC with an add charge." Inmate [redacted] interpreted they were going to beat him up severely that he would need to go to LCMC. It would justify their actions by saying he swung at them.

In the civil court trial transcript, Inmate [redacted] testified that the deputies told him, "If you stick your nose out the tray slot, I'm going to beat you up so severely that your going to end up at LCMC with an add charge.

The three deputies then escorted [redacted] to his cell. He does not recall if his cell mate, Inmate [redacted] was in the cell.

After the handcuffs were removed, [redacted] heard the clicking noise of a Taser and someone say, "Boo", to taunt him. He did not know if all three were carrying Tasers. He only saw the short deputy holding a Taser. The cell door was then closed behind him.

[redacted] felt the burning sensation get more intense. Inmate [redacted] arrived and he saw

apply baby powder to his genital area which gave him relief for a couple of minutes. The burning sensation returned for a few hours until he went to sleep.

During wristband count at 2200 hours, he informed the deputy that he was involved in an incident and that his neck and back hurt. Inmate said he had a bruise under his right eye from being punched. The deputy looked at Inmate who showed the deputy his knuckles and said, "No, it wasn't me." The deputy said he would return after wristband. The deputy did not return.

said he pressed the emergency intercom button and spoke to an officer 5-6 times, requesting to see a doctor. The officer told there was no doctor on duty.

Inmate stated he briefly told Inmate what happened. He told that he was pepper sprayed and was too embarrassed to elaborate in detail. showed the T-shirt and boxer shorts. said, "That's fucked up" and encouraged to report it.

The next morning, said he felt a slight warming sensation in his genital area. During the two (0600-0800) hour rec time, took a shower and made phone calls. said he first contacted his and told her what happened. told him she was going to go to the jail and get it taken care of. told her no and instead, wanted her to call the ACLU and Internal Affairs.

> **<u>IAB Note</u>: In the civil court trial transcript, Inmate was asked if he discussed what had happened to him the night before with anybody else that morning. testified that he "did not remember."**

said he then called his and told her what happened. He also told to call the ACLU and Internal Affairs as a precaution in the event did not. said contacted his other and told her what happened.

> **<u>IAB Note</u>: In the civil court trial transcript, Inmate stated he told his that he was pepper sprayed.**
>
> **Inconsistent statement - In deposition, stated she did not recall Inmate telling her he was pepper sprayed.**

said his back was still hurting. He exaggerated the pain and decided to go man-down so he could speak to a doctor and report the incident as opposed to reporting it to a deputy. said he went down on the floor, face down, on his own. He said he was

unable to walk.

> **<u>IAB Note</u>: [redacted] attorney then asked [redacted] if he fell on the floor. [redacted] said yes.**

> **<u>IAB Note</u>: In the civil court trial transcript, Inmate [redacted] testified, "I initiated my plan to get out of there and tell the doctors and tell the people I needed to tell."**

Deputy Chang was working with another deputy and approached [redacted] They flipped him over, grabbed him by his clothing (jail blues), lifted him slightly, and dragged him out of the pod. Deputy Chang said, "Oh, that fucker is faking it." The nurse arrived and requested Paramedics to respond. [redacted] does not recall telling the nurse that he was pepper sprayed and roughed up by deputies.

> **<u>IAB Note</u>: Inconsistent statement - In the civil court transcript, Inmate [redacted] testified that Deputy Pimentel and the other deputy picked him up, dragged him, then dropped him because he was screaming.**

Sergeant Patterson arrived on scene while the Paramedics were placing him on the gurney. Sergeant Patterson asked [redacted] how he got the marks on his face. [redacted] told him he was taken out of his cell and into the outdoor recreation area the night before and was pepper sprayed in the genitals.

Inmate [redacted] stated he does not remember if he told the Paramedics why his back hurt or told them about the incident.

> **<u>IAB Note</u>: According to Paramedic Kunath and EMT Bowen, Inmate [redacted] reported to them that he has been having back pain for two days and while walking, his back froze up.**
>
> **The alleged incident causing [redacted] back pain occurred the night before, approximately 12 hours prior.**

[redacted] stated while at LCMC, he told a deputy (Santos Ruano) about the incident. Later, the Custody Assistant at the hospital room door told him that his complaint was being looked into.

[redacted] stated a female Sergeant (Tracy Stewart) walked into his hospital room and told him she was going to pull his pants down to look at his buttocks area. [redacted] said it was

okay with him.

said he told the doctor at LCMC about the incident but did not tell the doctor that he was pepper sprayed because it was not an issue any longer. indicated he had a night's sleep, and in the morning, the pain was gone. He said he only felt a slight warming sensation and felt he did not need any medical attention. said he assumed it was pepper spray and knew it was not lethal so he wasn't too concerned about it. He was more concerned about his back.

> **<u>IAB Note</u>: Inconsistent statement - According to Deputy Ruano's statement, Inmate complained to Deputy Ruano at LCMC, while he was in the hospital bed, that his "rear end" was burning.**
>
> **<u>IAB Note</u>: Inconsistent statement - In the civil court transcript, Inmate testified that he did not remember telling any medical staff about the incident.**

said he showed the doctor the bruise on his face. The doctor saw the marks on his neck, but did not tell the doctor that he was punched or kicked and hit on the shoulder.

specifically told the doctor that his back went out because of an incident with deputies. He told the doctor that a deputy had dropped his knee on his back. The doctor examined back and x-rayed it. does not remember having a conversation with the doctor regarding the results of the x-ray. The doctor prescribed him Valium.

said the doctor did not do an exam on his genital area.

was transported back to Twin Towers Correctional Facility where he was prescribed a muscle relaxer in lieu of Valium. He took the medication for a few weeks. He said the medication did not help with the pain.

was then housed in Module with Inmate He recalls telling that he was beat up, but does not recall if he told him that he was pepper sprayed. said Inmate was in the cell and saw the soiled boxers when he gave them to the Sergeant.

was unable to remember if he ever saw a doctor again for his back issue. Over a period of 8-9 months, the pain gradually decreased.

stated he felt sexually violated as a result of the incident and became depressed. He began seeing a psychologist.

stated that approximately two weeks prior to the incident, his pod was moved from Module to Module . He was aware of a serious security breach of windows within the facility. He indicated it did not happen on his floor. Their pod was moved in order for them to refurbish the windows.

was asked if he knew one way or the other what he has been referring to as pepper spray during the deposition was in fact "pepper spray," or some sort of noxious chemical agent. said he did not know.

identified the Asian deputy as Chang. The tall heavyset deputy was Cordova and the short deputy was Pimentel.

<u>IAB Note</u>: For further details on deposition, refer to the CD in Exhibit E.

<u>IAB Note</u>: Refer to a copy of civil court trial transcribed testimony for further details.

<u>IAB Note</u>: Refer to Exhibit E for civil court trial testimony.



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



August 11, 2011

Deputy Davie Chang, #[redacted]

Dear Deputy Chang:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item 2708A, with this Department, effective the close of business September 1, 2011.

An investigation under File Number IAB 2209426, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, *Performance to Standards*; and/or 3-01/030.05, *General Behavior*, on or about November 5, 2007, you contacted inmate [redacted] at his cell in regards to a complaint. You and assisting deputies Pimentel and Cordova, handcuffed and removed Mr. [redacted] from his cell to the outdoor area where unreported, unjustifiable force was used on Mr. [redacted] as evidenced by, but not limited to:

    a) punching Mr. [redacted] in the face two or three times, and/or;

    b) grabbing and tearing Mr. [redacted] tee shirt causing scratch marks on the side of his neck, and/or;

    c) having Mr. [redacted] lay face-down on the ground while a knee was placed on Mr. [redacted] back and another knee was placed on Mr. [redacted] neck, and/or;

    d) pulling down Mr. [redacted] boxer shorts and spraying "pepper spray" into Mr. [redacted] anal area and testicles, and/or;

e) telling and/or threatening Mr. [redacted] that next time he complains he will be going to "LCMC" hospital with an "add-charge," and that the "actions could be justified" by saying that Mr. [redacted] swung at them, or words to that effect, and/or;

f) upon returning Mr. [redacted] to his cell and after removing the handcuffs, pulling the trigger on a Taser causing it to make an electrical clicking noise and saying, "Boo," or words to that effect, while laughing at Mr. [redacted] when closing the cell door.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, *Performance to Standards*; and/or 3-01/040.75, *Failure to Make Statements and/or Making False Statements during Departmental Internal Investigations;* and/or 3-01/030.05, *General Behavior*, when you were found in violation of federal civil codes upon verdict of United States District Court, Central District of California Case No. CV-09-893VBF regarding your conduct and actions with inmate [redacted] at TTCF. Thus, your conduct and actions were indicative of a failure to adhere to departmental policies, and use of unjustified and unreported force, a failure to perform to the standards expected of a deputy sheriff, and indicative of being untruthful during an administrative investigation.

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, *Obedience to Laws, Regulations and Orders*; and/or 3-01/050.10, *Performance to Standards*, on or about September 9, 2010, you were found in a civil court of law, Case No. CV-09-893VBF, to have violated by clear and convincing evidence, with malice, oppression and/or reckless disregard, an inmate's federal civil rights, thereby incurring liability against the Department for economic and non-economic damages. By your actions, you have brought discredit upon yourself and the Sheriff's Department as evidenced by, but not limited to:

a) you were found liable and violated Mr. [redacted] federal civil rights by a judgment of a civil court of law, and/or;

b) your violation of federal civil rights was the direct cause of injury or harm to Mr. [redacted] and/or;

c) you were found to have acted with malice, oppression, or reckless disregard in violating Mr. [redacted] federal civil rights, and/or;

d) you were found to have committed an unlawful state-law battery upon the person of Mr. [redacted] and/or;

e) your unlawful actions were found to be within the course and scope of your employment with the Sheriff's Department.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, *Obedience to Laws, Regulations and Orders*; and/or 3-01/040.10, *Incurring Liability Against the County*; on or about September 9, 2010, you were found in a civil court of law, Case No. CV-09-893VBF, to have violated by clear and convincing evidence, with malice, oppression and/or reckless disregard, an inmate's federal civil rights, thereby incurring liability against the Department for economic fees and damages. By your actions, you have brought discredit upon yourself and the Sheriff's Department.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Dennis Burns on August 26, 2011, at 0900 hours, in his office, which is located at Twin Towers Correctional Facility, 450 Bauchet Street, Room E-801, Los Angeles, California 90012. If you are unable to appear at the scheduled time and wish to schedule some other time prior to August 26, 2011, for your oral response, please call Chief Burns' secretary at (213) 893-5001, for an appointment.

If you choose to respond in writing, please call Chief Burns' secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Burns' office by no later than August 26, 2011.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Joseph M. Gooden, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures .

JMG:ah

c: Advocacy Unit
Employee Relations Unit
Chief Dennis H. Burns, Custody Operations Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # IAB 2209426)

LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET

X FELONY / MISDEMEANOR	AGENCY NAME: LASD - INTERNAL AFFAIRS	DA CASE NO. 30620018	DATE 08/19/2010
	AGENCY FILE NO. (DR OR URN): 407-00035-2003-441	DA OFFICE CODE: J.S.I.D. # 08-0147R	VICTIM ASSISTANCE REFERRAL ☐ YES – NOTIFY VWAP ☐ NO

SUSP NO.	SUSPECT	CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)): PIMENTEL, ANTHONY	PC	149	11/05/2007	B
	DOB: — SEX (M/F): M — BOOKING NO: — VIP -- Yes No				
	Gang Member Name of Gang / Victim Gang Member Name of Gang:				
2	NAME (LAST, FIRST MIDDLE)): CHANG, DAVIE	PC	149	11/05/2007	B
	DOB: — SEX (M/F): M — BOOKING NO.: — VIP -- Yes No				
	Gang Member Name of Gang				
3	NAME (LAST, FIRST MIDDLE)): CORDOVA, KRIS	PC	149	11/05/2007	B
	DOB: — SEX (M/F): M — BOOKING NO.: — VIP -- Yes No				
	Gang Member Name of Gang				

Comments

SEE ATTACHED.

COMPLAINT DEPUTY (print)	COMPLAINT DEPUTY (SIGNATURE)	STATE BAR NO.	REVIEWING DEPUTY (SIGNATURE)
PAUL M. NUNEZ/ap	[signature]	179793	[signature]

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SERGEANT SUSAN VAZIRI FILING OFFICER (SIGNATURE): mailed 8/31/10 SERIAL #: [redacted]

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715)			DISTRICT ATTORNEY'S REASON CODES
A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral M. Probation Violation filed (in lieu of) N. Referred to City Attorney for Misdemeanor Consideration

LAST NAME: PIMENTEL FIRST NAME: ANTHONY DA CASE NUMBER: 30620018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its examination of allegations that Los Angeles Sheriff's Department Deputies Anthony Pimentel, Serial # [redacted] Davie Chang, Serial # [redacted] and Kris Cordova, Serial # [redacted] assaulted [redacted] while he was in custody at the Twin Towers Correctional Facility. We conclude that there exists insufficient evidence to warrant the filing of criminal charges.

The following analysis is based on reports provided by the Los Angeles Sheriff's Department (LASD) on September 30, 2008, by Sergeant Susan Vaziri. Sergeant William Scott Petz obtained additional documents during the past year at the request of this unit. During the completion of this investigation, [redacted] initiated civil litigation against the deputies. This office invited counsel for both parties to submit documents that they had compiled during the course of their discovery.[1] Compelled statements by the deputies, if any exist, were not considered.

SUMMARY OF FACTS

On November 5, 2007, Twin Towers Correctional Facility inmate [redacted] alleged Los Angeles Sheriff's Department Deputies Anthony Pimentel, Davie Chang, and Kris Cordova removed [redacted] from his cell, handcuffed him, and took him to an isolated area where the deputies punched [redacted] in the face. The deputies then laid him face down on the floor, pulled his underwear down and applied Oleoresin Capsicum Spray (pepper spray) to his anus and testicles. The deputies allegedly committed these acts in order to discipline [redacted] for breaking custody rules earlier in the day. The involved deputies did not make any statements or write a use of force report.

On May 25, 2007, [redacted] was convicted of a felony in violation of Penal Code § 273.5 for assault upon his [redacted] [redacted].[2] He was sentenced to three years formal probation and 365 days in county jail with credit for time served. On August 23, 2007, he was arrested for stalking [redacted]. This office handled that matter as a probation violation rather than a new filing. While in custody on the violation for stalking, [redacted] was housed in the Twin Towers Custody Facility.[3]

LASD Internal Criminal Investigations detectives interviewed [redacted] on three separate occasions.[4] On November 5, 2007, he stated three deputies assaulted him in Module 241

[1] Defense attorney Vicki Podberesky submitted one interview conducted by her investigator. Attorney Arnoldo Casillas submitted a deposition of his client [redacted] but did not submit depositions of his client's [redacted] and [redacted] despite repeated requests.

[2] [redacted] is [redacted] years old. In 2001, he suffered two sustained juvenile petitions for unlawful driving in violation of Penal Code § 10851 and petty theft in violation of Penal Code § 484(a). He has two misdemeanor drug convictions and he was arrested on other burglary and drug charges, which resulted in declinations by this office.

[3] After his release from custody on this matter, [redacted] was charged with a violation of Penal Code section 273.5 regarding the same victim in Case # BA340815. That matter was dismissed on August 13, 2008.

[4] [redacted] was interviewed on the day of the incident, November 5, 2007. He was also interviewed on November 22, 2007 and January 20, 2008.

because they believed he disrespected them during the linen exchange process when deputies pass out clean clothing to the inmates.

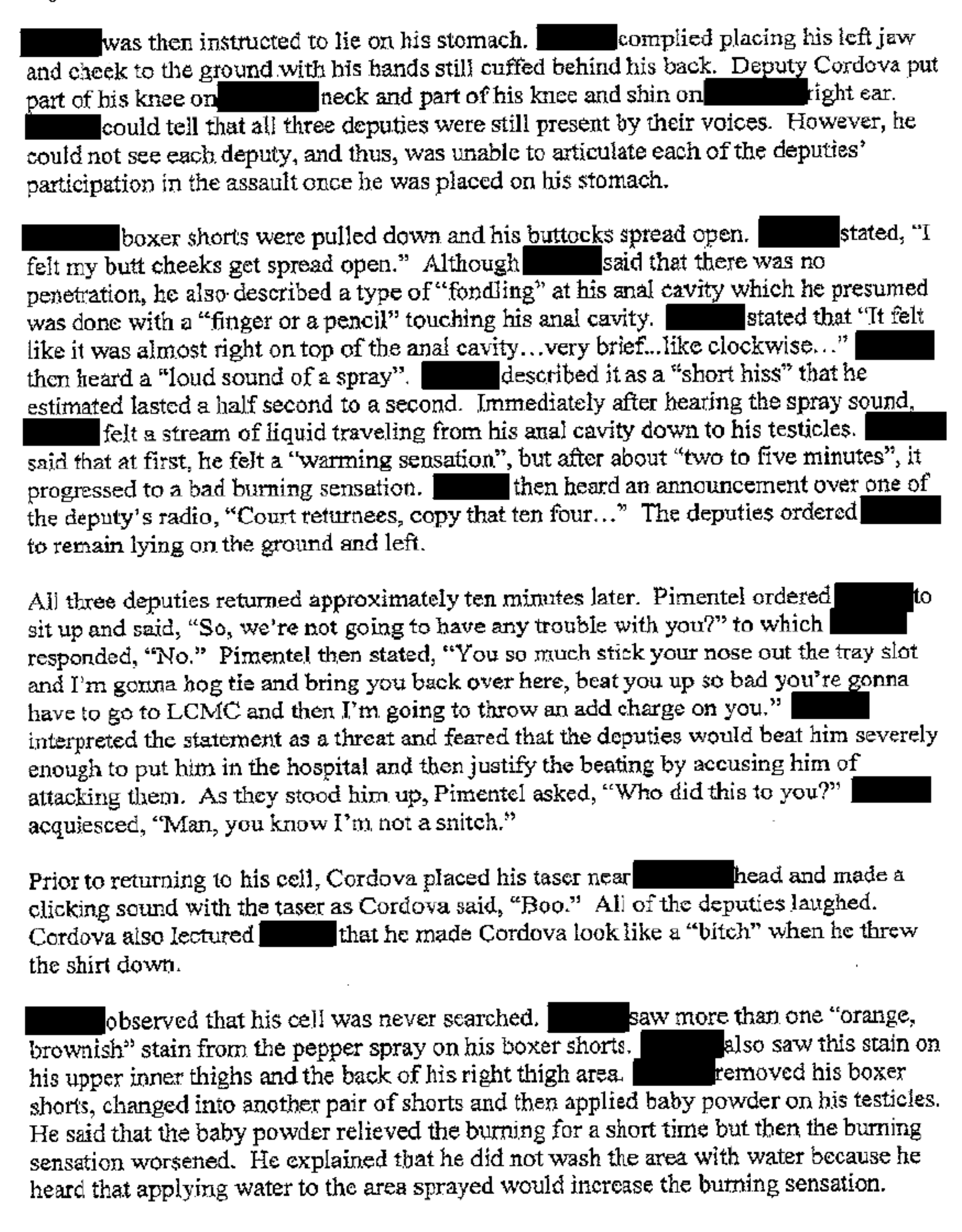
stated typically inmates in Module were given clean laundry while the inmates are in their cells. Deputies handed a set of "county blues" to each inmate through the tray slot in his cell. Subsequently, the inmates exited their cells to retrieve their dinner trays, which had been placed on a table located outside their cells by trustees. When the inmates exited their cells to retrieve their trays, they discarded their dirty linen in a pile to the side of the tables before picking up their trays.

On the day of the alleged incident, between obtaining the new county blues and exiting his cell for dinner, changed into his new pants. As he left his cell to get his tray, he believed that his new pants smelled badly. He asked Deputy Kris Cordova for another pair of pants. stated, "Hey, boss, do you think I could have another pair of blues, these one's smell." Cordova handed another pair of pants. ran back into his cell to check the shirt that had been given to him during the linen exchange. He was concerned that it too might smell like the pants. Upon realizing that the shirt was also smelly, again exited his cell and informed Cordova that the shirt smelled too. Cordova denied request stating, "What do you think I am some kind of bitch." said, "Fuck" and threw the new shirt into the pile of dirty linen. Cordova watched throw the shirt as he conversed with Deputy Chang. did not hear their conversation. The deputies then ordered to his cell and told him to take the new, smelly shirt with him.

Approximately forty minutes later, Deputies Pimentel, Cordova and Chang approached cell where he was reading a book while dressed in boxer shorts, a t-shirt and socks. They informed and his cellmate, of their intention to do a random cell search. The deputies ordered and to exit the cell. was still wearing his boxer shorts, a white t-shirt and socks. Both and complied. They were handcuffed with their hands behind their backs. was escorted to the visiting area and told to wait. was taken to the outdoor recreation area by all three deputies.[5] was told to sit on the ground and he complied with his hands still handcuffed behind his back.

Chang knelt next to and ordered him to apologize to Cordova. remained silent. Chang insisted that he apologize to Cordova as he punched in the right jaw with a closed fist. remained silent. Pimentel then grabbed the left side of t-shirt with force strong enough to rip it at the collar and leave a mark on neck. Pimentel then asked "How's the shirt now?" The deputies continued to order to apologize, stating, "Apologize for dropping the F bomb." Chang continued to jab with his fists two or three more times. refused to apologize.

[5] The recreation area is outside the view of the modules.



was then instructed to lie on his stomach. complied placing his left jaw and cheek to the ground with his hands still cuffed behind his back. Deputy Cordova put part of his knee on neck and part of his knee and shin on right ear. could tell that all three deputies were still present by their voices. However, he could not see each deputy, and thus, was unable to articulate each of the deputies' participation in the assault once he was placed on his stomach.

boxer shorts were pulled down and his buttocks spread open. stated, "I felt my butt cheeks get spread open." Although said that there was no penetration, he also described a type of "fondling" at his anal cavity which he presumed was done with a "finger or a pencil" touching his anal cavity. stated that "It felt like it was almost right on top of the anal cavity…very brief...like clockwise…" then heard a "loud sound of a spray". described it as a "short hiss" that he estimated lasted a half second to a second. Immediately after hearing the spray sound, felt a stream of liquid traveling from his anal cavity down to his testicles. said that at first, he felt a "warming sensation", but after about "two to five minutes", it progressed to a bad burning sensation. then heard an announcement over one of the deputy's radio, "Court returnees, copy that ten four…" The deputies ordered to remain lying on the ground and left.

All three deputies returned approximately ten minutes later. Pimentel ordered to sit up and said, "So, we're not going to have any trouble with you?" to which responded, "No." Pimentel then stated, "You so much stick your nose out the tray slot and I'm gonna hog tie and bring you back over here, beat you up so bad you're gonna have to go to LCMC and then I'm going to throw an add charge on you." interpreted the statement as a threat and feared that the deputies would beat him severely enough to put him in the hospital and then justify the beating by accusing him of attacking them. As they stood him up, Pimentel asked, "Who did this to you?" acquiesced, "Man, you know I'm not a snitch."

Prior to returning to his cell, Cordova placed his taser near head and made a clicking sound with the taser as Cordova said, "Boo." All of the deputies laughed. Cordova also lectured that he made Cordova look like a "bitch" when he threw the shirt down.

observed that his cell was never searched. saw more than one "orange, brownish" stain from the pepper spray on his boxer shorts. also saw this stain on his upper inner thighs and the back of his right thigh area. removed his boxer shorts, changed into another pair of shorts and then applied baby powder on his testicles. He said that the baby powder relieved the burning for a short time but then the burning sensation worsened. He explained that he did not wash the area with water because he heard that applying water to the area sprayed would increase the burning sensation.

folded the stained boxer shorts and hid them inside a t-shirt which he had fashioned into a bag to store his personal belongings. He also placed the ripped t-shirt into the bag and placed the bag under his bunk.

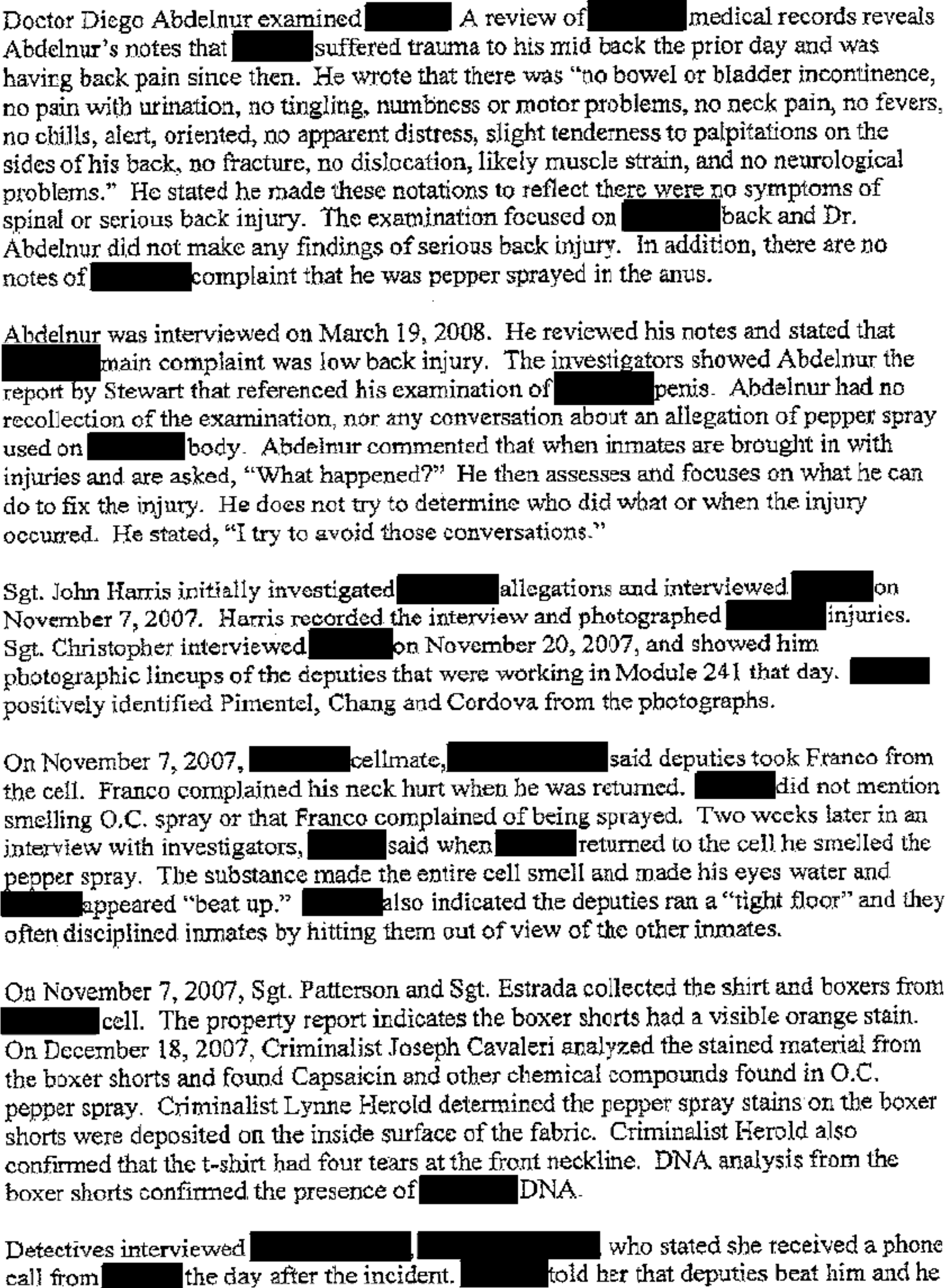
Later that evening during the 10:00 p.m. "wristband count", claimed he showed Deputy scratches and bruises he had on his neck. He also informed that he needed medical attention. said the asked him what had happened and he answered that he had an "incident." explained to investigators that he did not want to provide details to for fear he would cover up for the deputies. said that when saw the injuries he looked at his cellmate, then told that he would return to get him. However, never returned. During the night, kept pushing the emergency button telling the monitors that he needed medical attention but he was ignored. In a subsequent interview as part of this investigation denied that asked him for medical attention.[6]

The next morning, collapsed on the module stairs and complained that his back went out. Subsequently, many deputies, including Chang, responded to calls for help.[7] Supervisor, Sergeant Paul Patterson, responded to the scene where laid on the ground awaiting the arrival of paramedics. Patterson questioned as he videotaped him on the ground. gave Patterson a brief statement regarding the pepper spray incident. told Patterson that "Deputy Chang and two Hispanic deputies" were involved. Eventually the paramedics arrived, placed him on a gurney and transported him to the Los Angeles County Medical Center [LAMC].

Deputy Santos Ruano was assigned to LAMC and questioned about his medical complaint prior to seeing the doctor. told Ruano that following a linen exchange, three deputies came to his cell, handcuffed him and took him to the outdoor recreation area demanding that he apologize to them for being disrespectful during the exchange. said he refused because he had done nothing wrong. described the assault which culminated in the pepper spraying of his anus. also told that his complaints to the deputies on the subsequent shift went unanswered. relayed this information to his supervisor, Sergeant Tracy Stewart.

Stewart examined for injuries and saw a small scratch to the right side of his face and two to three scratches to the right side of his neck. Stewart spoke to the doctor who also saw the injuries but told her that he could not determine if those injuries were consistent with the fight described by Stewart noted in her report that *neither she nor the doctor "saw any redness to the back side or penis of inmate* "

[6] Deputies did not file a use of force report in this case.
[7] Deputy Matthew Ahrari documented the initial complaint by and reported that only complained of back pain. He stated in his report that he did not see any other injury. Ahrari recorded complaint that he could not move his arms or legs due to a fall. was also unable to hold a pen to sign the medical documents presented to him.



Doctor Diego Abdelnur examined [redacted] A review of [redacted] medical records reveals Abdelnur's notes that [redacted] suffered trauma to his mid back the prior day and was having back pain since then. He wrote that there was "no bowel or bladder incontinence, no pain with urination, no tingling, numbness or motor problems, no neck pain, no fevers, no chills, alert, oriented, no apparent distress, slight tenderness to palpitations on the sides of his back, no fracture, no dislocation, likely muscle strain, and no neurological problems." He stated he made these notations to reflect there were no symptoms of spinal or serious back injury. The examination focused on [redacted] back and Dr. Abdelnur did not make any findings of serious back injury. In addition, there are no notes of [redacted] complaint that he was pepper sprayed in the anus.

Abdelnur was interviewed on March 19, 2008. He reviewed his notes and stated that [redacted] main complaint was low back injury. The investigators showed Abdelnur the report by Stewart that referenced his examination of [redacted] penis. Abdelnur had no recollection of the examination, nor any conversation about an allegation of pepper spray used on [redacted] body. Abdelnur commented that when inmates are brought in with injuries and are asked, "What happened?" He then assesses and focuses on what he can do to fix the injury. He does not try to determine who did what or when the injury occurred. He stated, "I try to avoid those conversations."

Sgt. John Harris initially investigated [redacted] allegations and interviewed [redacted] on November 7, 2007. Harris recorded the interview and photographed [redacted] injuries. Sgt. Christopher interviewed [redacted] on November 20, 2007, and showed him photographic lineups of the deputies that were working in Module 241 that day. [redacted] positively identified Pimentel, Chang and Cordova from the photographs.

On November 7, 2007, [redacted] cellmate, [redacted] said deputies took Franco from the cell. Franco complained his neck hurt when he was returned. [redacted] did not mention smelling O.C. spray or that Franco complained of being sprayed. Two weeks later in an interview with investigators, [redacted] said when [redacted] returned to the cell he smelled the pepper spray. The substance made the entire cell smell and made his eyes water and [redacted] appeared "beat up." [redacted] also indicated the deputies ran a "tight floor" and they often disciplined inmates by hitting them out of view of the other inmates.

On November 7, 2007, Sgt. Patterson and Sgt. Estrada collected the shirt and boxers from [redacted] cell. The property report indicates the boxer shorts had a visible orange stain. On December 18, 2007, Criminalist Joseph Cavaleri analyzed the stained material from the boxer shorts and found Capsaicin and other chemical compounds found in O.C. pepper spray. Criminalist Lynne Herold determined the pepper spray stains on the boxer shorts were deposited on the inside surface of the fabric. Criminalist Herold also confirmed that the t-shirt had four tears at the front neckline. DNA analysis from the boxer shorts confirmed the presence of [redacted] DNA.

Detectives interviewed [redacted], [redacted] who stated she received a phone call from [redacted] the day after the incident. [redacted] told her that deputies beat him and he

was deprived medical attention. [redacted] told her he would stage a fall the next day in order to receive medical attention. [redacted] attempted to contact the facility's chaplain in order to get her [redacted] some assistance. The following day she visited the location and spoke to the watch commander who confirmed the situation was under investigation.

[redacted] submitted to a deposition on April 30, 2010, where he was questioned about the incident. When he described the assault that took place, he included additional blows to his head and body prior to the spraying. He stated the deputies punched him 4-10 times in the face. A deputy wearing boots kicked him in the side just before a deputy "dropped a knee" into his back. [redacted] insisted that the back injury was real and that he initially complained to the doctor about his back and not the pepper spray because "it was more of an issue at the time." [redacted] did not describe what injury exactly caused his "back to give out" but said it must have been done during the time the deputies had dropped a knee on his back.[8]

Petz obtained the "Individual Uses of Force Report" spreadsheet for 2007 at the jail facility. Prior to this incident, [redacted] was housed in Module 242, a location where O.C. spray was deployed 19 times. Petz also obtained a report documenting a riot that occurred in Module 242 on October 9, 2007. The riot started when an inmate known as the "shot caller" for the module was removed from his cell for being under the influence. The shot caller ordered the other inmates to disobey the deputies from their cells. The inmates began to flood the module and throw hard objects and urine from their cells. O.C. spray was fired into each of the cells to stop the disturbance. [redacted] was moved into Module 241 on October 12, 2007, because repairs to Module 242 were made necessary by the riot that occurred on October 9, 2007.[9]

Petz gathered three reports that detailed breaches of security at Twin Towers in 2007. The breaches involved windows, which were either removed or broken, and the inmates then used fishing wire to bring contraband into the facility. It is unclear what items or weapons were brought into the jail using this method. Deputies found the broken windows twice in Module 241.

II LEGAL ANALYSIS

Penal Code § 149 provides:

Every public officer who, under color of authority, without lawful necessity, assaults or

[8] In his initial complaint, [redacted] stated the force the deputies applied to him while he was on the ground was a knee and shin on his neck. He did not describe a knee on his upper or lower back.

[9] Defense investigator Jack Scully interviewed Ahrari. Ahrari told Scully that 90% of the time when O.C. spray is used, the deputies have trustees or the inmates clean the affected area with rags or inmate clothing. Ahrari also stated that often times deputies fire pepper balls at the inmates to stop a disturbance and that these rounds often do not break. The pepper ball rounds are usually collected and saved by the inmates and have been found by deputies throughout the jails.

beats any person, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by such fine and imprisonment.

It is clear, based on [redacted] allegations, that the elements of P.C. 149 are established in his allegations. However, [redacted] credibility is critical to the analysis in this case.[10] During the course of the investigation, [redacted] made several statements regarding matters central to the allegations that are inconsistent with either his prior statements or other evidence. Furthermore, additional witnesses or physical evidence cannot corroborate several of [redacted] allegations. Without maintaining sufficient credibility and no corroboration, the filing of these charges is not warranted.

[redacted] Injuries

Dubious Back Pain

[redacted] initially requested treatment for apparent back pain due to a fall. [redacted] told responding deputies that he fell coming down the stairs on November 6, 2007 and as a result experienced back pain and had trouble moving his extremities. [redacted] did not complain of any other injuries to those who initially helped him including Deputy Ahrari. Throughout the subsequent interviews with the investigating deputies, [redacted] insisted he experienced back pain but he did not indicate whether the pain was from the fall or the initial beating. [redacted] never described the location of the pain in his back or the symptoms of his pain other than what he told the first responding deputies. [redacted] did not note any markings or bruising on his body as a result of the fall, knees in the back or the apparent kick he received. Instead, he focused his complaints on being pepper sprayed and bringing attention to that conduct.

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[10] CALJIC 2.20 Believability of Witness reads:
Every person who testifies under oath is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.
In determining the believability of a witness you may consider anything that has a tendency reasonably to prove or disprove the truthfulness of the testimony of the witness, including but not limited to any of the following:
The extent of the opportunity or ability of the witness to see or hear or otherwise becomes aware of any matter about which the witness testified;
The ability of the witness to remember or to communicate any matter about which the witness has testified;
The character and quality of that testimony;
The demeanor and manner of the witness while testifying;
The existence or nonexistence of a bias, interest, or other motive;
The existence or nonexistence of any fact testified to by the witness;
The attitude of the witness toward this action or toward the giving of testimony;
A statement previously made by the witness that is consistent or inconsistent with his testimony;
The character of the witness for honesty or truthfulness or their opposites;
An admission by the witness of untruthfulness;
The witness' prior conviction of a felony.

focus on reporting the pepper spraying is consistent with his statement to investigators who stated that called her the night of the incident and told her he was beat up and pepper sprayed and that he was going to "stage a fall" so that he could receive treatment. , , contacted Lt. Douglas Slaughter and told him contacted her and said he was beaten up and pepper sprayed and had "neck pain" because of the assault.

On the day of his alleged back injury, deputies transferred Franco to LCMC where he underwent a full examination and he only received Motrin for his apparent injury. In the subsequent weeks and months, repeated visits to the medical staff focused on treatment for an unrelated rash and did not focus on residual back pain. If it is true that feigned his back injury, it becomes possible he also fabricated the O.C. spray assault.

Lack of Facial Injuries

On November 7, 2007, investigators photographed a one half inch scratch, one inch from the right corner of his mouth. neck and face were also photographed and no other mark is seen. First responding deputies Ahrari and Ruano documented there were no other markings or scratching around neck and he did not point out any injuries to them on November 6.

Several inmates stated that at the time of the assault, deputies returned to his cell and they observed his ripped t-shirt and bruising, or redness, or scratches around face and neck. Despite these multiple injuries being observed by these witnesses, deputies who documented the injuries on November 6th, and the photographs taken the next day, fail to indicate these described injuries. What is also notable is that does not have any swelling on his face as a result of being punched 4-10 times by deputies.

Lack of Pepper Spray Injuries

described the liquid from the spray entering his anal cavity and running down his leg towards his testicles. He stated that the pain lasted throughout the night. The next day when he disclosed the assault, he was seen by Dr. Abdelnur and Sgt. Harris. Both witnesses did not see any apparent redness or injury in the described area.

Potential Evidence is Fabricated.

On October 9, 2007, a major disturbance in module caused deputies to deploy O.C. spray into the cells of all the inmates in his module. The disturbance lasted for five hours and repeated uses of the spray were necessary. In addition, LASD documented 19 separate uses of O.C. spray in housing units up until this incident.

did not provide the pepper sprayed boxers at the time he was sprayed or the next day when he was examined by medical personnel. The boxers were collected two days

later by Sergeant Estrada who saw [redacted] retrieve them from his cell. [redacted] alleges he kept the boxers hidden for two days in order to keep them from the assaulting deputies. However, it is possible he kept these boxers from the October 9, 2007, incident in his former housing unit. There is no evidence that the substance on the boxers came from the exact spray can in the possession of any of the suspected deputies.[11]

Because the substance is used commonly throughout the jail, there could be many sources for the O.C. spray on the boxers that cannot be accounted for by the prosecution. These discrepancies coupled with the informal policy that inmates clean the affected area themselves allows for the possibility that the boxers were soiled with O.C. spray from another day or incident.

[redacted] Additional Credibility Issues

[redacted] had made one prior complaint of unlawful use of force by a deputy while in custody at the Pitchess Jail on May 15, 2007. [redacted] alleged Deputy C. Herrera kicked him while Herrera searched him. LASD investigators interviewed [redacted] who declined to give a videotaped interview but repeated the allegations off camera. Investigators reviewed videotape of the incident and saw none of the conduct alleged by [redacted] They found the incident to be unsubstantiated and did not reprimand the deputy.

[redacted] had been convicted of felony domestic violence on May 3, 2007, for which he received a year in jail. He violated his probation with a stalking arrest in July of 2007, which resulted in the judge imposing another year of jail. As a juvenile, [redacted] suffered sustained petitions for petty theft and vehicle theft. As an adult, he was arrested for driving without a license and gave false information to a police officer.

III. Conclusion

The evidence examined in this investigation is insufficient to prove beyond a reasonable doubt that Anthony Pimentel, Davie Chang, and Kris Cordova committed an act of assault under color of authority in violation of Penal Code § 149. [redacted] statements and the quality of physical evidence lack the necessary amount of credibility needed to satisfy the burden of proof required. Furthermore, without percipient witnesses, incriminating statements by the accused or other evidence to corroborate [redacted] claims, the sufficiency of the evidence does not support a prosecution of these deputies. There is no way to determine that the O.C. spray found on the boxers in [redacted] possession came from a canister in the deputies' possession. Consequently, the People cannot prove beyond a reasonable doubt that Pimentel, Chang, and Cordova assaulted [redacted] under color of authority.

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[11] Investigators did not determine whether the canisters had been previously used or were completely full.

Based upon the above analysis, we decline to initiate criminal proceedings against LASD deputies Pimentel, Chang, and Cordova. We are closing our file and we will take no further action in this matter.



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

March 23, 2015

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***ANTHONY PIMENTEL*** *for a hearing on his* ***discharge****, effective September 8, 2011, from the position of Custody Assistant, Sheriff's Department,* **Case No. 11-315**, *and petition of* ***DAVIE CHANG*** *for a hearing on his* ***discharge****, effective September 8, 2011, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 11-313**. *(Cases Consolidated)*

The Civil Service Commission, at its meeting held on March 18, 2015 approved findings in the above-entitled case. The petitioners' objections were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: Anthony Pimentel
Davie Chang
Leslie Wilcox
Nohemi Gutierrez-Ferguson
Joseph Scully

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective September 8, 2011, from the position of Custody Assistant, Sheriff's Department, and* ***discharge****, effective September 8, 2011, from the position of Deputy Sheriff, Sheriff's Department, of*))))))))

ANTHONY PIMENTEL AND DAVIE CHANG
(Case No. 11-315)

ORDER OF THE CIVIL SERVICE COMMISSION

On March 18, 2015, the Civil Service Commission of the County of Los Angeles overruled the petitioners' objections and adopted as its final decision the findings and recommendation of the Hearing Officer, Joseph Scully, to sustain the Department in the discharges.

Dated this 25th day of March, 2015.

Z. GREG KAHWAJIAN, President

DENNIS F. HERNANDEZ, Member

NAOMI NIGHTINGALE, Member

STEVEN AFRIAT, Member

JOHN DONNER, Member

COPY

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

In the Matter of the Appeals by	)	
	)	Case No. 11-313
ANTHONY PIMENTEL,	)	Case No. 11-315
DAVIE CHANG,	)	
Appellants	)	RECOMMENDED DECISION,
v.	)	FINDINGS OF FACT, CONCLUSIONS
SHERIFF'S DEPARTMENT,	)	OF LAW
	)	
Respondent.	)	
	)	

APPEARANCES

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Pasadena, California 91107

Hearing Officer: Joseph P. Scully

Dates of Hearing: 9/11/12, 9/13/12, 2/20/13, 3/20/13, 3/25/13, 6/24/13, 6/27/13, 7/2/13, 1/8/14, 6/11/14

ISSUES

On November 9, 2011, the Commission defined the issues in Pimentel appeal to be:

1. Are the allegations contained in the department's letter of September 12, 2011 true?

2. If any or all are true, is the discipline appropriate?

On November 9, 2011, the Commission defined the issues in Chang appeal to be:

1. Are the allegations contained in the department's letter of September 12, 2011 true?

2. If any or all are true, is the discipline appropriate?

On November 9, 2011, the appeal by Anthony Pimentel (CSC Case No. 11-313) and Davie Chang (CSC Case No. 11-315) were combined in a joint hearing, pursuant to the stipulation and consent of the Appellants.

DEPARTMENT EXHIBITS

1. Letter of Intent 8/11/11, to D. Chang
2. Letter of Intent 8/11/11, to A. Pimentel
3. Letter of Imposition, 9/12/11, D. Chang
4. Letter of Imposition, 9/12/11, A. Pimentel
5. ICIB Table of Contents
6. ICIB Supplemental Report, 1/22/08
7. ICIB Supplemental Report, 3/11/08
8. ICIB Supplemental Report, 8/26/08
9. ICIB Interview of Inmate [redacted]
10. Sgt. Matthews' corrected transcript of ICIB interview of [redacted]
11. Photographic Line Up and Admonition
14. LASD Trace Evidence Lab Report 12/18/07
15. LASD Trace Evidence Lab Report 2/29/08
16. LASD Trace Evidence Lab Report 7/30/08

20. LASD Trace Evidence Lab Report 8/25//08
22. ICIB interview of [redacted] audio recording.
23. IAB Interview of D. Chang, audio recording.
24. IAB Interview of A. Pimentel, audio recording.
25. Transcript, IAB Interview of D. Chang.
26. Transcript, IAB Interview of A. Pimentel.
27. First Amended Complaint
28. Special Verdict
29. Judgment
31. IAB Narrative report.
32. IAB Addendum Summary
34. Case review re D. Chang.
35. Case review re A. Pimentel
36. Audio recording various witnesses
37. Twin Towers Insubordinate Inmate Policy
38. Benchnotes of Criminalist Susannah Knetchel
39. Criminalist Susannah Knetchel CV
40. Transcript of Interview of [redacted] 1/9/07
41. Inmate video interviews
42. Transcript of Kris Cordova statement, 11/22/10
43. Audio of Kris Cordova statement, 11/22/10
44. Professional basketball court dimensions
45. Administrative Investigative Handbook
46. Transcript of interview [redacted]
47. Audio of interview of [redacted]
48. Title 15 of the United States Code
49. Twin Towers Security Breach documents.

APPELLANTS' EXHIBITS

A. Lab Report, Specialist Pratt
B. ICIB Subject report.
C. Closing Supplemental Report
D. Vance Roque interview.
E. Vance Roque interview, part 2.
F. Vance Roque interview, part 3.
G. Inmate [redacted] medical records.
H. Memo from Sgt. Reveles to Lt. Lopez

I. Inmate injury report.
J. Memo from Sgt. Figueroa to Lt. Slaughter.
K. Guidelines for discipline.
L. Psychology of discipline.
M. Inmate movement history for [redacted]
N. Emergency Medical Services report.
P. D.A. Charge Evaluation Worksheet
S. Inmate Information Sheet, [redacted]
T. Criminal History of [redacted]
U. Charge Evaluation Worksheet
V. ICIB Supplemental Report
W. Letter to D. Chang from Capt. Gooden dtd 8/15/11
X. Letter to A. Pimentel from Capt. Gooden dtd 8/15/11
Y. Disposition worksheet.
Z. Disposition worksheet.
AA. Inmate information report re [redacted]
BB. Criminal History of [redacted]
DD. Supplemental report by Sgt. Kniest on 9/28/10
EE. Charge evaluation and D.A. reject re [redacted] complaint
FF. Inmate discipline report re [redacted]
GG. Inmate discipline report re [redacted]
HH. Inmate Franco's movement history
II. Criminal history of [redacted]
JJ. Inmate discipline report for [redacted]
KK. Information sheet re [redacted]
LL. Inmate [redacted] criminal history.
QQ. Inmate injury report re [redacted]
RR. Second inmate injury report re [redacted]
UU. Video of [redacted] and [redacted] interviews with Sgt. Patterson
VV. Memo from Sgt. Stewart to Sgt. Patterson
WW. Photographs of Outdoor Rec area.
XX. Diagram of module.
AAA. Audio of Deputy [redacted] interview.
BBB. Audio of Dr. Abdelnur interview
CCC. Audio of Deputy [redacted]
DDD. Audio of Custody Assistant Roque interview.
GGG. Video of Sgt. Patterson's inmate interviews.
III. Deposition of [redacted]
JJJ. Excerpt of trial testimony of [redacted]

KKK. Force calculation report.
LLL. Incident report dated 10/9/07
MMM. Transcript of Deputy [redacted]
NNN. Transcript of ICIB interview of [redacted]
OOO. Transcript of Interview with Dr. Diego Abdelnur
PPP. Emergency Room record re [redacted]
QQQ. Diagram of Twin Towers module w/ Pimentel notes.
RRR. Probationer report by A. Pimentel
SSS. Letter from county counsel Granbo to Gilbert Nishimura.
TTT. Commendation letter to A. Pimentel
UUU. Probationer report re A. Pimentel.
VVV. Performance Evaluation re A. Pimentel
WWW. Letter from Capt. Gooden to A. Pimentel
XXX. Letter from Capt. Gooden to D. Chang.
YYY. Disposition worksheet.
ZZZ. Disposition worksheet.
CCCC. Deputy Chang Performance Evaluation.
DDDD Administrative rights form signed by A. Pimentel.
EEEE. Administrative rights form signed by D. Chang.
FFFF Defense agreement D. Chang.
GGGG. Judgment on Jury Verdict.
HHHH. Diagram marked by D. Chang
IIII. Deposition of Danny Bowen
JJJJ. Deposition of Cooper Kunath

CASE SUMMARY

This matter involves the appeal by terminated Sheriff's Department Deputies Anthony Pimentel and Davie Chang (hereafter "Appellants"). The hearing dates in this matter were: 9/11/12, 9/13/12, 2/20/13, 3/20/13, 3/25/13, 6/24/13, 6/27/13, 7/2/13, 1/8/14, and 6/11/14. The Department called 13 witnesses: Criminalist Joseph Cavaleri, Sgt. Susan Vaziri, Chief Alexander Yim, Inmate [redacted] Criminalist Lynne Denise Herold, Inmate [redacted] Capt. Joseph Gooden, Inmate [redacted] Sgt. Benjamin Estrada, Criminalist Susanneh Knectchel, Criminalist Jill Soumas, Sgt. Kelly Matthews, and Sgt. Paul

Patterson. Appellants also called 13 witnesses: Sgt. John Kniest, Lt. William Petz, Custody Assistant Vance Roque, Jr., Deputy Matt Ahrari, Deputy Keegan McInnis, Sgt. Charles Cabarrubias, Deputy Andres Bilbao, Deputy Anthony Pimentel, Dr. Diego Abdelnur, Lt. Michael Strickland, Capt. Alicia Ault, Deputy Davie Chang, and [redacted]

The Department offered Exhibits 1-11, 14-16, 20, 22-29, 31, 32, 34-49 into evidence. All except Exhibit 44 were accepted into evidence. Exhibit 44 is a document which purports to be a diagram of a professional basketball court giving its dimensions, but this exhibit had no authentication so it was not admitted into evidence, over the Department's strenuous objection.

Appellants offered the Exhibits listed above into evidence, all of which were accepted. (Appellants chose to use letters to designate their exhibits, which became cumbersome and confusing as the hearing progressed.)

Appellants were terminated effective September 8, 2011. The terminations were based on conduct alleged to have occurred on November 5, 2007, at the Twin Towers Jail. On that date, the Department alleges that Appellants hit inmate [redacted] pepper sprayed him in the anus and testicles, and threatened him should he disclose the incident. The Department also alleges that Appellants were found guilty in a federal civil rights <u>civil</u> trial of violating [redacted] civil rights by the foregoing actions. Appellants deny any unlawful conduct regarding inmate [redacted]

DISCUSSION

I. Are the Allegations of the September 12, 2011 Termination Letters True?

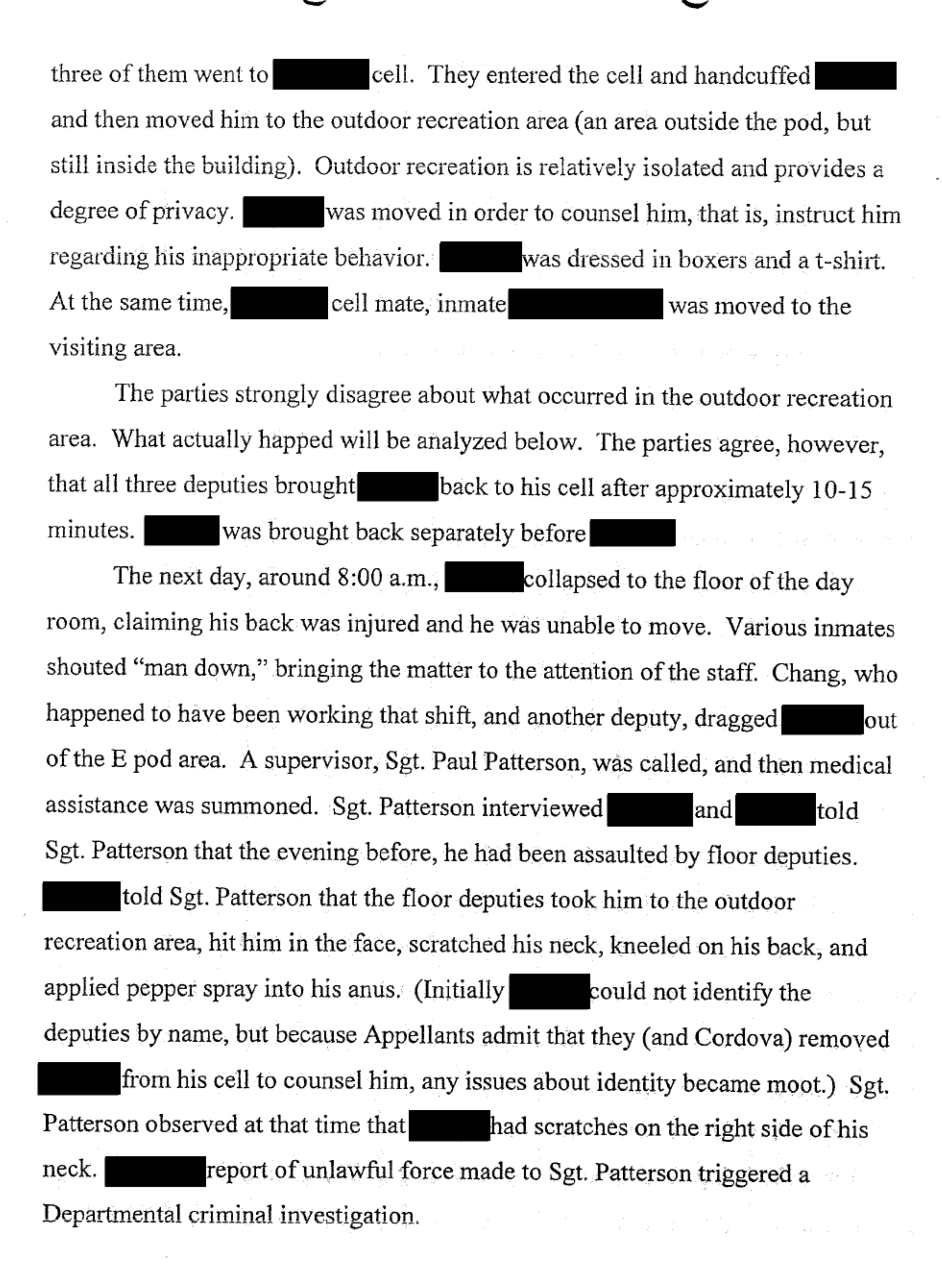
A. The Hearing Officer finds that the Department has proven by a preponderance of the evidence that Appellants used unlawful force against inmate [REDACTED] as alleged in Charge 1 of the September 12, 2011 termination letters.

1. General Overview of the Case.

This case was hard fought on both sides. The hearing lasted nearly 2 years, 10 days of hearing, and each side called 23 witnesses. There were 112 total exhibits consisting of multiple transcripts, reports, video and audio recordings, and various other documents. Each side submitted lengthy written closing briefs, making passionate arguments on behalf of the respective parties.

In general, the evidence offered by the Department and the Appellants were consistent with respect to the following facts. On or about November 5, 2007, an inmate by the name of [REDACTED] ("[REDACTED]") was incarcerated at Twin Towers jail on a probation violation charge. On the stated date, [REDACTED] was housed in module 241, pod E. Module 241 is a high-security module for gang members. During the evening linen exchange, [REDACTED] requested to exchange his blue uniform because the first one he was issued smelled badly. Deputy Kris Cordova ("Cordova") denied [REDACTED]'s request, and [REDACTED] then threw his shirt into the bin and uttered an expletive. (Deputy Cordova was a probationary deputy and after the incident with [REDACTED] occurred, the Department terminated his employment. He did not testify at the hearing.)

Thereafter, Appellants, Deputy Davie Chang ("Chang") and Deputy Anthony Pimentel ("Pimentel"), and Cordova, conferred about [REDACTED] and the



three of them went to cell. They entered the cell and handcuffed and then moved him to the outdoor recreation area (an area outside the pod, but still inside the building). Outdoor recreation is relatively isolated and provides a degree of privacy. was moved in order to counsel him, that is, instruct him regarding his inappropriate behavior. was dressed in boxers and a t-shirt. At the same time, cell mate, inmate was moved to the visiting area.

The parties strongly disagree about what occurred in the outdoor recreation area. What actually happed will be analyzed below. The parties agree, however, that all three deputies brought back to his cell after approximately 10-15 minutes. was brought back separately before

The next day, around 8:00 a.m., collapsed to the floor of the day room, claiming his back was injured and he was unable to move. Various inmates shouted "man down," bringing the matter to the attention of the staff. Chang, who happened to have been working that shift, and another deputy, dragged out of the E pod area. A supervisor, Sgt. Paul Patterson, was called, and then medical assistance was summoned. Sgt. Patterson interviewed and told Sgt. Patterson that the evening before, he had been assaulted by floor deputies. told Sgt. Patterson that the floor deputies took him to the outdoor recreation area, hit him in the face, scratched his neck, kneeled on his back, and applied pepper spray into his anus. (Initially could not identify the deputies by name, but because Appellants admit that they (and Cordova) removed from his cell to counsel him, any issues about identity became moot.) Sgt. Patterson observed at that time that had scratches on the right side of his neck. report of unlawful force made to Sgt. Patterson triggered a Departmental criminal investigation.

The Department conducted a criminal investigation into the alleged use of force by Appellants and Cordova against [redacted] At the same time, [redacted] filed a federal civil lawsuit alleging his civil rights were violated by the three deputies, and by the County of Los Angeles. Because of the pending criminal investigation, Appellants refused to make a statement to Department investigators. The federal judge refused to stay the civil rights trial to allow completion of the criminal investigation, and therefore Appellants did not testify in their own defense at the civil rights trial. On September 9, 2010, the federal jury returned a special verdict finding Appellants liable for violating Franco's civil rights. (The County was dismissed from the lawsuit before the trial.) The civil verdict was given without Appellants ever testifying as to their version of events.

On or about August 31, 2010, the Los Angeles District Attorney issued a memo rejecting any criminal charges against Appellants for the alleged [redacted] assault. On December 9, 2010, the Department's Internal Affairs Bureau ("IAB") interviewed Appellants in separate interviews. This was the Department's first interview of Appellants on the subject of [redacted] allegations. On August 11, 2011, the Department issued its letters of intent to discharge, and on September 12, 2011, the Department issued its letters terminating Appellants as of September 8, 2011.

2. The Evidence Supports a Finding that Appellants Assaulted Inmate [redacted] on November 5, 2007.

The Hearing Officer finds that the evidence supports the finding that Appellants assaulted inmate [redacted] on November 5, 2007 in the outdoor recreation area. The assault consisted of 2-4 punches to the face, a ripped shirt which caused scratches and redness on [redacted] neck, kneeling on [redacted] back and neck, and pepper spray into [redacted] anus.

The evidence which the Hearing Officer finds persuasive includes the following. First, the Department offered the testimony of four criminalists, all of whom are highly trained experts in their fields. Two of the criminalists, Joseph Cavaleri and Lynne Denise Herold, hold Ph.D degrees.

The criminalists tested [redacted] boxer shorts and t-shirt for evidence. The boxers had a prominent orange stain in the rear around the anal area. The sample of the stain showed it contained Freeze Plus P, which is the brand of Oleoresin Capsicum spray (i.e., pepper spray) that the Department issues to deputies. Under a microscopic analysis of the capillary expansion of the stain, the criminalists determined that the stain was deposited on the boxers from the inside out, which is consistent with [redacted] account of how he was assaulted. Also, the boxers were tested for DNA, and they were found to have the DNA of two persons, but primarily that of [redacted] The DNA was found on the inside waist band of the boxers, precisely where it would be expected if [redacted] had worn the boxers. The t-shirt was also tested and found to have a residue of Freeze Plus P brand of OC (pepper) spray.

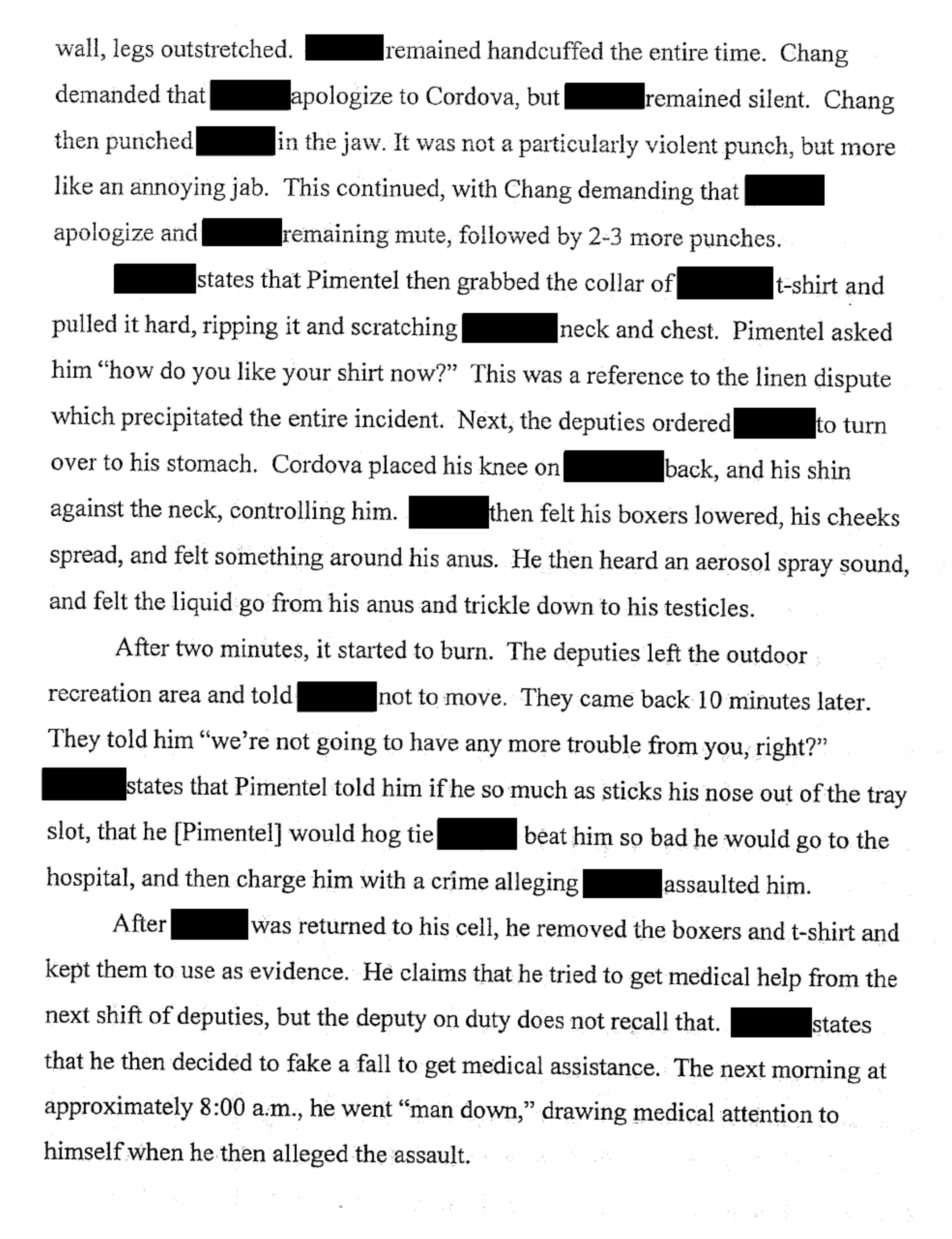
Inmate [redacted] testified at the hearing (by telephone from Kern Valley State Prison) that on November 5, 2007, he was [redacted] cellmate. He testified that on that date, the deputies (he did not recall any names) removed him and [redacted] from the cell. Then he was returned to the cell. The deputies were polite, even friendly to him. [redacted] was returned a few minutes later. He observed that [redacted] looked roughed up, and he stank of pepper spray. It stunk up the entire cell and made [redacted] eyes water. He also saw the staining on the rear side of the boxer shorts.

Custody Assistant Vance Roque, Jr. ("Roque") also testified at the Hearing. Roque was on duty on the evening of November 5, 2007. At the time of the

incident with [redacted] Roque was in the module's control booth. From that position, he controlled all the cell doors in the entire module, and was able to see all areas of the module. He also had audio monitoring capability. Roque testified that he observed all three deputies (i.e., Appellants and Cordova) escort [redacted] from his cell into the outdoor recreation area, and then he observed all three deputies escort [redacted] out of the outdoor recreation area back to his cell. He does not recall how long they were in the outdoor recreation area, but it was short, 5-10 minutes. Roque testified that he both heard and saw all three deputies speaking with [redacted] in the outdoor recreation area. However, Roque denies seeing or hearing specifically what occurred in the outdoor recreation area.

In general, the Hearing Officer finds that Roque tried to assist Appellants with his testimony, both at the Hearing and in his IAB interview. Despite this effort, in crucial respects his testimony contradicts that of Appellants. For example, Pimentel testified that only deputy Cordova went into the outdoor recreation area with [redacted] Pimentel testified that he remained outside outdoor recreation and Chang was in the visiting area with [redacted] Roque's testimony that all three officers were in outdoor recreation with [redacted] and all three left outdoor recreation together is therefore critical in contradicting the testimony of Pimentel and Chang. In both his IAB interview, and in his Hearing testimony, Roque did not observe that the deputies were separated from each other or from [redacted]

Inmate [redacted] did not testify at the Hearing. However, he was interviewed by the Department on several occasions. He was also deposed in the federal civil case, and he gave trial testimony in the federal civil case. Although there are some discrepancies in his testimony, the Hearing Officer finds that any discrepancies are minor and do not detract from the basic account which he gave. [redacted] claims that he was taken to outdoor recreation and ordered to sit with his back against the



wall, legs outstretched. remained handcuffed the entire time. Chang demanded that apologize to Cordova, but remained silent. Chang then punched in the jaw. It was not a particularly violent punch, but more like an annoying jab. This continued, with Chang demanding that apologize and remaining mute, followed by 2-3 more punches.

states that Pimentel then grabbed the collar of t-shirt and pulled it hard, ripping it and scratching neck and chest. Pimentel asked him "how do you like your shirt now?" This was a reference to the linen dispute which precipitated the entire incident. Next, the deputies ordered to turn over to his stomach. Cordova placed his knee on back, and his shin against the neck, controlling him. then felt his boxers lowered, his cheeks spread, and felt something around his anus. He then heard an aerosol spray sound, and felt the liquid go from his anus and trickle down to his testicles.

After two minutes, it started to burn. The deputies left the outdoor recreation area and told not to move. They came back 10 minutes later. They told him "we're not going to have any more trouble from you, right?" states that Pimentel told him if he so much as sticks his nose out of the tray slot, that he [Pimentel] would hog tie beat him so bad he would go to the hospital, and then charge him with a crime alleging assaulted him.

After was returned to his cell, he removed the boxers and t-shirt and kept them to use as evidence. He claims that he tried to get medical help from the next shift of deputies, but the deputy on duty does not recall that. states that he then decided to fake a fall to get medical assistance. The next morning at approximately 8:00 a.m., he went "man down," drawing medical attention to himself when he then alleged the assault.

3. Appellants' Evidence was Insufficient to Overcome the Weight of the Department's Evidentiary Showing.

The Department bears the burden of proof in this discharge case, and the Hearing Officer finds that the Department has met that burden of proof. Appellants offered evidence to counter that offered by the Department. That evidence and Appellants' arguments will be discussed below.

Appellants argue that the testimony of [redacted], [redacted] [redacted] and [redacted] (all inmates) cannot be trusted because they are felons and criminals. [redacted] and [redacted] are inmates who testified at the Hearing by telephone from their respective prisons. Appellants offered evidence indicating that inmates often fabricate stories against deputies, and will often band together to fabricate false accounts against deputies.

In general, the Hearing Officer has a high index of suspicion when listening to the testimony of convicted felons. The Hearing Officer also accepts that felons and criminals in jail often are highly motivated to lie. As a result, any such testimony is closely scrutinized.

In this case, the Hearing Officer finds that [redacted] and [redacted] were not trustworthy, and their testimony is largely disregarded. The reason for this is the following. First, both these inmates made claims that they, too, were victims of unlawful beatings by Appellants. However, those claims only arose after [redacted] made his claims. The Hearing Officer is suspicious that those claims by [redacted] and [redacted] were fabricated for a financial motive, or other manipulative purpose. Also, the Hearing Officer credits the hearsay testimony of the trial judge who called [redacted] an extremely smart and evil defendant. This judge had the opportunity to observe [redacted] in court, and to listen to the evidence of [redacted] conduct, and his observations are entitled to great weight. Lastly, the Hearing

Officer is not convinced that [redacted] and [redacted] who were housed in their own separate cells, were actually able to observe [redacted] returning to his cell. They clearly have zero knowledge of what occurred in outdoor recreation. So their testimony is limited to what they could briefly observe behind their own closed cell doors. The Hearing Officer is not sufficiently persuaded of their credibility to place any reliance upon their alleged observations.

The Hearing Officer does credit the testimony of inmate [redacted] This is based on several factors. [redacted] was [redacted] cell mate. [redacted] testimony is based on personal first-hand observations made immediately after the event in question. Unlike [redacted] and [redacted] [redacted] did not claim that he was a victim of being beaten by deputies. To the contrary, he stated that he was well-treated by the deputies. [redacted]'s account of the facts was limited, i.e., not wildly exaggerated. His testimony did not seem to be rehearsed, but seemed spontaneous and based on personal recollection. For example, [redacted] did not know or even attempt to identify the deputies by name. In fact, [redacted] did not appear to try to help [redacted] he appeared to just state what he saw, smelled and observed. [redacted] admitted that he laughed at [redacted] and thought it was funny that [redacted] had been pepper sprayed in the anus, which appeared to be a credible account of how he actually reacted. [redacted] is older and a more mature inmate, which also increased his credibility. For these reasons, the Hearing Officer credits [redacted]'s testimony.

Appellants also offered evidence and argument suggesting that the pepper spray on the boxers could have been deposited at a different time, for example, by inmates cleaning up after a brawl in the jail during which pepper spray was deployed. The Hearing Officer considered this theory, but in the end there is no evidence that such an event actually occurred. Moreover, [redacted] [redacted] and the criminalists and Sgt. Estrada all observed the stain on [redacted]'s boxers, and it was

uniformly described as limited to the back of the boxers, closest to the anus. If the boxers had been used to clean up the jail after a brawl, one would expect a stain at random locations and would also expect a pattern of dirt and dust stains. However, no such pattern of dirt or dust was observed by the highly trained criminalists who conducted macro and microscopic examinations of the boxers. In the end, Appellants' argument is based on speculation and is not consistent with the actual evidence.

Appellants also argue that the chain of custody of the boxers and t-shirt was not sufficiently reliable. However, the Hearing Officer finds that the Department's chain of custody was sufficiently reliable. Appellants' arguments appear to try to suggest a "reasonable doubt," but the evidence at the Hearing did not reveal any serious flaw in the collection of the evidence in this case. For example, Appellants point out that [REDACTED] did not turnover the boxers to the Department investigator Sgt. Benjamin Estrada until November 7, 2007, two days after the incident. Appellants suggest that between the evening of November 5, 2007 and the time of collection on November 7, 2007, the boxers could have been tampered with. But that argument is mere speculation. There is no actual evidence, direct or circumstantial, suggesting that the boxers were tampered with. To the contrary, Sgt. Estrada testified that he wore gloves when handling the boxers, he also observed the orange stain in the rear seat of the boxers, and he booked the boxers into evidence.

Appellants also argue that Dr. Diego Abdelnur, the physician who examined [REDACTED] the morning of November 6, 2007, did not find any evidence to support [REDACTED]'s claims that he had been assaulted. The doctor did find tenderness in the back and scratches on the neck which were consistent with [REDACTED]'s account.

It is true that there was no evidence of pepper spray on [redacted]'s body. However, the Hearing Officer was presented with no evidence which suggests that inflamation or redness caused by exposure to pepper spray will remain on the body for more that a few hours. To the contrary, Appellants presented testimony from Sgt. Charles Cabarrubias, who was part of the Department's force training unit from 2000 until 2011. He is a Department expert on use of force, including use of pepper spray. Part of training for deputies is to be sprayed in the face with pepper spray, and Sgt. Cabarrubias has sprayed hundreds of recruits with pepper spray.

Sgt. Cabarrubias testified that pepper spray affects everyone differently. Some have minor discomfort, and others a major reaction. On some people the effects last one hour, and on others much longer. There can be no doubt, however, that the effects of pepper spray are temporary and cause no lasting or permanent damage.

According to [redacted]'s medical records (Exhibit PPP), Dr. Abdelnur examined [redacted] at 10:30 a.m. on November 6, 2007, which was approximately 14 hours after [redacted] alleges he was exposed to pepper spray in the anus. Given the testimony by Sgt. Cabarrubias on the short-acting and temporary effects caused by pepper spray, the Hearing Officer does not attach any significance to the fact that Dr. Abdelnur found no medical evidence of pepper spray on [redacted]'s body some 14 hours after the exposure.

Appellants also argue that [redacted]'s testimony is hearsay and "shall not be sufficient in itself to support a finding" unless the hearsay is subject to an exception to the hearsay rule, pursuant to Civil Service Commission ("CSC") Rule 4.10(B). The Hearing Officer finds that the transcripts of [redacted]'s testimony are hearsay. This hearsay is admissible, pursuant to CSC Rule 4.10(B). However, there is no exception to the hearsay rule for [redacted]'s various hearsay transcripts,

and therefore pursuant to Rule 4.10(B), ███'s testimony is not sufficient in itself to support a factual finding.

Despite this fact, however, the Hearing Officer believes that the totality of evidence offered at the Hearing provides support for the material portions of ███'s testimony. This includes the testimony of Appellants, ███ Roque and the four criminalists. Appellants admit that they removed ███ from his cell. They admit that ███ was taken to the outdoor recreation area to counsel him. Roque testified that all three deputies went into outdoor recreation with ███ and then all three came out with ███. This is considered direct evidence which support's ███'s account that the three deputies were with him in outdoor recreation.

███ saw ███ immediately after he left the deputies presence and saw he was "roughed up" with redness and scratches on his face and neck. Sgt. Peterson also observed the same scratches the next morning. ███ smelled the pepper spray on ███ and saw the pepper spray stain on ███'s boxers. ███'s direct observations amount to strong circumstantial evidence that ███ had been roughed up, consistent with being punched a few times, his shirt torn, and pepper spray applied directly to his anus. The location being a jail, and ███ an inmate, means that ███ was under the direct observation and/or control of the three deputies at all times. Hence, the only logical inference from the strong circumstantial evidence is that it was the deputies who roughed ███ up, tore his shirt, and applied pepper spray to his anus.

The testimony by the four criminalists confirmed that the boxers were ███'s (i.e., had ███'s DNA on the waist band) and the boxers had a stain of Freeze Plus P which was applied from the inside of the boxers. Sgt. Estrada also observed the stain on the boxers. The criminalists tested a sample of Freeze Plus P

and determined by gas chromatography that the substance staining the boxers was, in fact, Freeze Plus P. This is both direct and circumstantial evidence which corroborates [redacted]'s account.

Overall, the testimony of Appellants, Roque, [redacted] and the four criminalists all support and corroborate [redacted]'s statements given to the IAB investigators. As such, [redacted]'s hearsay statements (which are already admitted because hearsay is admissible) are sufficiently supported so that [redacted]'s statements can be relied upon to form factual findings.

B. The Hearing Officer finds that Charge 2 of the September 12, 2011 termination letters is not proven.

The Hearing Officer finds that Charge 2 of the September 12, 2011 termination letter is ungrammatical and therefore unintelligible. Although the Hearing Officer is willing to reasonably interpret the Department's termination letter, Charge 2 is so poorly worded that the Hearing Officer cannot determine what it is the Appellants are alleged to have done which was a policy violation. The Hearing Officer finds that any interpretation that could be applied would be forcing a meaning which may or may not have been the Department's intent. Therefore since it is the Department's burden to allege and prove its allegations against Appellants, the lack of clarity must result in a finding in favor of Appellants on Charge 2.

C. The Hearing Officer finds that Charge 3 of the September 12, 2011 termination letters is true.

Charge 3 of the September 12, 2011 termination letters alleges that in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders; and/or 3-01/050.10, Performance to Standards, that on or about September 9, 2010, Appellants were found liable in a federal court

action for violating [redacted]'s civil rights. Specifically the Department alleges that the jury found by clear and convincing evidence that Appellants were found liable for violating [redacted]'s federal civil rights; the violation of rights was the direct cause of injury to [redacted]; that Appellants were found to have acted with malice, oppression or reckless disregard; that Appellants were found to have committed a state law battery upon [redacted]; and that Appellants' unlawful acts were committed in the course and scope of their employment.

Department's Exhibit 28 is the Special Verdict form which proves that the Department's allegations in Charge 3 are true.[1]

Appellants argue that Charge 3 violated the Peace Officers Procedural Bill of Rights Act ("POBR"), specifically Government Code § 3303(c), which states "The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation." In support of the argument, Appellants cite *Hinrichs v. County of Orange* (2004) 125 Cal.App.4th 921.

Hinrichs, however, does not fully support Appellants' argument. In *Hinrichs*, the agency had given the accused officer a written memo detailing the policy manual section she was alleged to have violated. Later, when it imposed discipline, a new policy violation was included. The Court of Appeal held that was impermissible. However, with respect to the notice under Section 3303, the Court held that minimal notice to the accused officer is required:

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[1] The Department's Charge 3 alleges that the Appellants violated Franco's civil rights, "thereby incurring liability against the Department for economic and non-economic damages." The Special Verdict is against Appellants and deputy Cordova only, not against the Department. Therefore, there is no evidence that Appellants' actions in violating [redacted] civil rights as found by the Special Verdict also caused the Department to incur "economic and non-economic damages."

> "We do not necessarily disagree with the Department's contention that it was not obligated to give Hinrichs more than a general description of the allegations against her. Section 3303 provides only that she is entitled to be "informed of the nature of the investigation prior to any interrogation." (§ 3303, subd. (c).) Under that standard, it would be difficult to argue Hinrichs was entitled to a detailed specification of the exact charges leveled. However, in our view, if the Department does choose to specify a particular regulation that the officer is alleged to have violated, and provides *no other description of the alleged wrongful conduct,* the Department cannot thereafter impose discipline based upon a different regulation."

Hinrichs, 125 Cal.App.4th at 933.

When Appellants were interviewed by IAB, or interrogated within the language of Section 3303, they were informed of the identities of the investigating officers and the general subject matter of the investigation. Appellants were accompanied by their counsel, the same counsel who represented them at the Hearing. It is true that Appellants were not told at the outset of their interviews that the issue of the civil rights Special Verdict would be part of the investigation. However, this level of detail is not required, as the Court in *Hinrichs* noted.

The Department clearly informed Appellants prior to any interrogation that the Department investigation pertained to the allegations by inmate [redacted] that Appellants had used unlawful force on him. Thus, the Department complied with the requirements of Section 3303. In addition, as noted in *Hinrichs*, a harmless

error analysis would apply to any procedural violation. Here, the Special Verdict was entered on September 9, 2010, and Appellants were interviewed on December 9, 2010. Appellants were well aware of the Special Verdict against them when they were interviewed. They were well aware of the factual basis for the Special Verdict. The Special Verdict was based entirely upon Appellants' alleged conduct regarding [redacted] which Appellants knew was the subject of the IAB investigation. As such, the discipline arising from the Special Verdict is not procedurally unfair to Appellants. Certainly, Appellants have not alleged or demonstrated any actual prejudice. Therefore, even if there was an error, it was harmless.

D. The Hearing Officer finds that Charge 4 of the September 12, 2011 termination letters is true.

Charge 4 of the September 12, 2011 termination letters alleges that in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders; and/or 3-01/040.10, Incurring Liability Against the County, that on or about September 9, 2010, Appellants were found liable in a federal court action for violating [redacted]'s civil rights, thereby incurring liability against the Department for economic fees and damages.

As noted above, the Special Verdict, Exhibit 28, establishes that Appellants were found liable by clear and convincing evidence of violating [redacted]'s civil rights. The Hearing Officer finds that these facts are sufficient to establish a violation of Manual Section 3-01/030.10, Obedience to Laws, Regulations and Orders which states, in part, "Members shall not willfully violate any federal statute, state law or local ordinance." The Special Verdict specifically finds that Appellants violated federal civil rights and state law regarding battery.

The issue of whether the Department also proved the violation of Manual Section 3-01/040.10, Incurring Liability Against the County, is more difficult.

Appellants argue that the Special Verdict is against Appellants only, not the Department. The Department provided no evidence that the County has paid any of the damages assessed against the Appellants.

The Department argues that it incurred legal fees to defend Appellants which constituted sufficient expense to amount to a "liability against the Department" in violation of Manual Section 3-01/040.10. It also incurred legal fees to defend itself up until it was dismissed from the lawsuit on summary judgment. However, the Department provided no evidence that it incurred legal fees defending itself, and no evidence that it was able to obtain a dismissal after a summary judgment.

After weighing the evidence, the Hearing Officer finds that the Appellants did violate Manual Section 3-01/040.10, Incurring Liability Against the County. The County, as Appellants' employer, was obligated to indemnify Appellants for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Labor Code § 2802(a). If it had turned out that Appellants were exonerated by the civil jury, the Hearing Officer would likely have concluded that there was no violation of Section 3-01/040.10. That is because it would be inappropriate to find a policy violation against Appellants for an expenditure that is mandated by the Labor Code and for conduct not found to be wrongful.

However, here, the civil jury found by clear and convincing evidence that Appellants' conduct was wrongful. The Hearing Officer also finds that conduct to have been wrongful. The County did incur fees and expenses in providing a defense to Appellants in the federal civil rights lawsuit. Thus, as a result of Appellants' wrongful conduct in using unlawful force against the County incurred fees and expenses. But for that wrongful conduct, the County would not

have incurred those fees and expenses. The Hearing Officer finds that these facts are sufficient to constitute a violation of Manual Section 3-01/040.10, Incurring Liability Against the County.

In summary, the Hearing Officer finds that the allegations in the Department's September 12, 2011 letters with respect to Charge 1, Charge 3 and Charge 4 are true except as specified above. The allegations in Charge 2 are unintelligible and therefore not proven.

II. IS THE PENALTY OF TERMINATION APPROPRIATE?

The Hearing Officer finds that the penalty of termination in this case is appropriate for both Appellants.

The overriding consideration in cases of discipline of a public employee is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, harm to the public service. Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability.

It appears to the Hearing Officer that Appellants decided to appropriate for themselves the decision as to what rights inmates were to have in module 241. Rather than follow the Department's rules and orders regarding inmate discipline and use of force, Appellants decided that if an inmate steps out of line, as [redacted] did when he cursed and rejected his shirt, then that inmate would be and in [redacted]'s case actually was, subjected to harsh and humiliating physical discipline.

The Department's Guidelines for Discipline (Exhibit K) support the imposition of termination. The Guidelines note that generally, "discipline should be corrective in nature and designed to impress upon the employee and the overall work force the necessity for proper conduct and performance." (Guidelines,

Exhibit K, pg. 2.) However, non-progressive termination is appropriate in instances of "fraternization with inmates, drug usage, *dishonesty*, thievery, *violent behavior*, insubordinate behavior, or *behavior which is illegal or places the individual or the Department in violation of federal, state or local laws*, or court orders." (Exhibit K, pg. 3.)

Appellants' conduct was clearly unlawful. However much anger Appellants might have felt about inmate behavior, the County and the Department have a right to expect that its deputies in the jail will comply with legal requirements and not physically abuse the inmates. The type of abuse Appellants engaged in is highly corrosive and damaging to the public service. First, it sets a bad example for other deputies. By its nature, the physical abuse of inmates promotes and requires a culture of lies and deception among the deputies. That, in turn, promotes a general culture of lawlessness. A culture of lawlessness can easily lead to greater and greater abuses, for example theft and misuse of county property, abuse of inmates, assisting or condoning extortion, smuggling drugs and contraband, etc. etc. In short, the physical abuse of inmates in the jail is intolerable. It causes a significant harm to the public service. Therefore, the termination of Appellants' employment is appropriate.

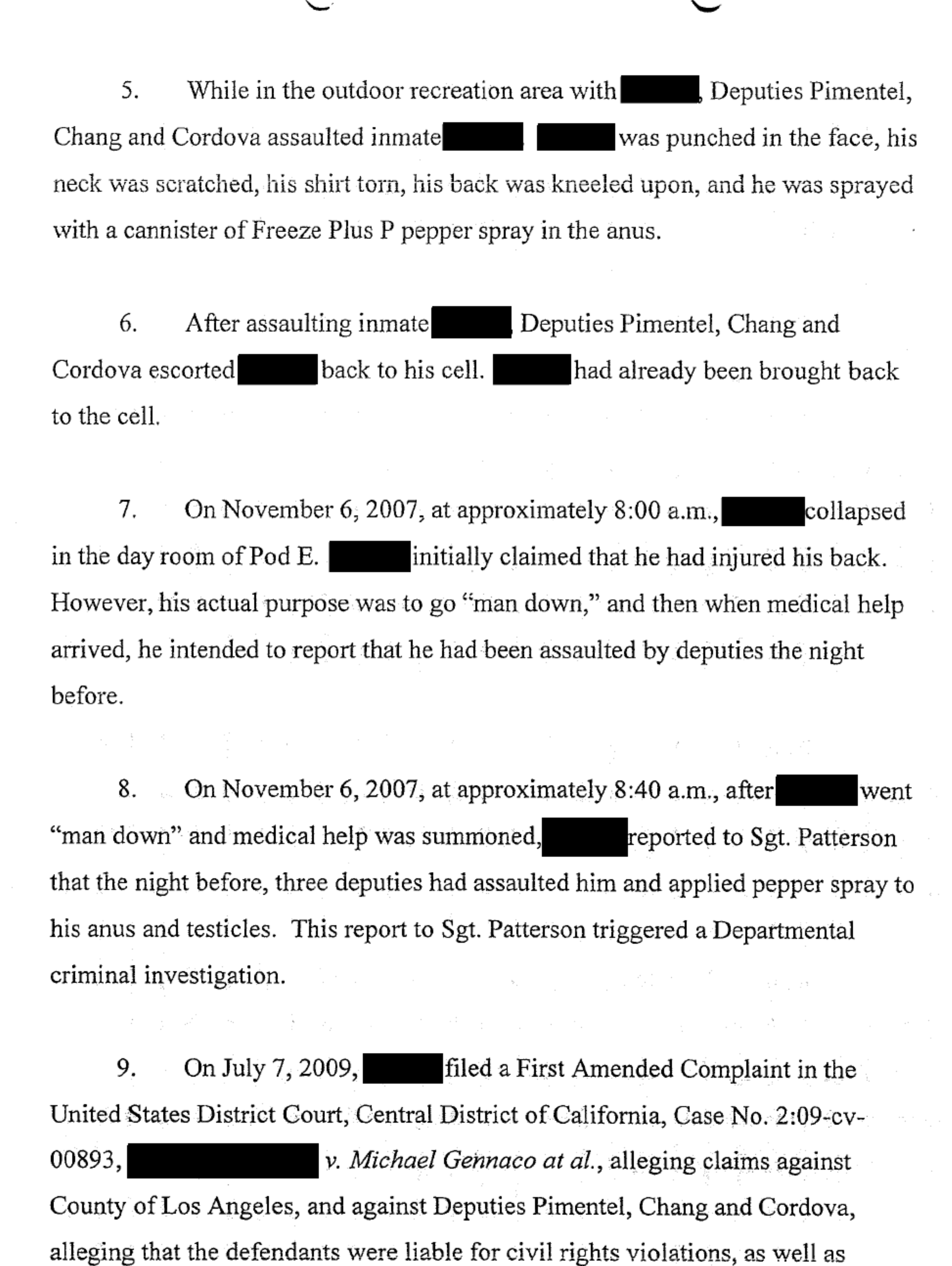
FINDINGS OF FACT

1. On November 5, 2007, inmate (" ") was in the custody of the Los Angeles County Sheriff's Department, and was housed in Twin Towers Jail, Module 241, Pod E.

2. On November 5, 2007, caused a conflict within Module 241 when, during linen exchange, demanded to exchange his prison blue uniform because he claimed the one he was issued smelled bad. Deputy Kris Cordova was conducting the linen exchange and he denied 's request to exchange the blues. then became defiant, threw his blue shirt into the laundry bin and uttered one or more expletives, and walked away.

3. Deputy Cordova informed Deputies Pimentel ("Pimentel") and Chang ("Chang") what had occurred with . Approximately 45 minutes after the incident with the linen exchange, Pimentel, Chang and Cordova went to 's cell.

4. Deputies Pimentel, Chang and Cordova opened 's cell and entered the cell. was dressed in boxer shorts and a t-shirt. The deputies handcuffed and his cellmate, inmate . They then removed and from the cell. was brought to the visiting area and left there. was brought to outdoor recreation and seated on the floor.



5. While in the outdoor recreation area with , Deputies Pimentel, Chang and Cordova assaulted inmate was punched in the face, his neck was scratched, his shirt torn, his back was kneeled upon, and he was sprayed with a cannister of Freeze Plus P pepper spray in the anus.

6. After assaulting inmate , Deputies Pimentel, Chang and Cordova escorted back to his cell. had already been brought back to the cell.

7. On November 6, 2007, at approximately 8:00 a.m., collapsed in the day room of Pod E. initially claimed that he had injured his back. However, his actual purpose was to go "man down," and then when medical help arrived, he intended to report that he had been assaulted by deputies the night before.

8. On November 6, 2007, at approximately 8:40 a.m., after went "man down" and medical help was summoned, reported to Sgt. Patterson that the night before, three deputies had assaulted him and applied pepper spray to his anus and testicles. This report to Sgt. Patterson triggered a Departmental criminal investigation.

9. On July 7, 2009, filed a First Amended Complaint in the United States District Court, Central District of California, Case No. 2:09-cv-00893, *v. Michael Gennaco at al.*, alleging claims against County of Los Angeles, and against Deputies Pimentel, Chang and Cordova, alleging that the defendants were liable for civil rights violations, as well as

assault and battery.

10. The County of Los Angeles provided a defense to Pimentel, Chang and Cordova by paying for their attorney to defend them in the federal civil rights lawsuit.

11. On or about September 9, 2010, by a unanimous verdict, the jury in [redacted]'s federal civil rights lawsuit returned a special verdict which included the following findings: that Pimentel, Chang and Cordova violated [redacted]'s federal civil rights; that the violation of [redacted]'s federal civil rights caused injury to [redacted]; that in violating [redacted]'s federal civil rights, Pimentel, Chang and Cordova acted with malice, oppression or reckless disregard; that Pimentel, Chang and Cordova committed a state law battery against [redacted]; that the state law battery harmed [redacted]; that Pimentel, Chang and Cordova were acting in their course and scope of their employment with the Sheriff's Department; and that with respect to the state law battery upon [redacted], Pimentel, Chang and Cordova acted with malice, oppression or fraud.

CONCLUSIONS OF LAW

1. On November 5, 2007, Appellants Pimentel and Chang violated the Department's Manual of Policy and Procedures ("Manual") Sections 3-01/050.10 Performance to Standards, and Section 3-01/030.05, General Behavior, when they handcuffed [redacted], removed [redacted] from his cell, brought [redacted] to the outdoor recreation area, and then assaulted [redacted] by punching him, scratching his neck,

ripping his shirt, kneeling on his back, and applying pepper spray to [redacted] anus.

2. Charge 2 of the Department's September 12, 2011 letters to Appellants Pimentel and Chang is ungrammatical, and the grammatical errors render the charge unintelligible. Since Appellants Pimentel and Chang cannot reasonably understand what they are being charged with doing, they cannot be found in violation of Department orders with respect to Charge 2.

3. On or about September 9, 2010, Appellants Pimentel and Chang violated Manual Section 3-01/030.10, Obedience to Laws, Regulations and Orders, and Section 3-01/050.10, Performance to Standards, when they were found liable to [redacted] in a federal jury trial, Case No. Case No. 2:09-cv-00893, [redacted] *v. Michael Gennaco at al.* The federal jury found by clear and convincing evidence that Pimentel and Chang had violated [redacted]'s federal civil rights, had committed a state law battery upon [redacted] that the foregoing violations caused injury to [redacted], and that Appellants Pimentel and Chang had acted with malice, oppression or reckless disregard in violating [redacted]'s federal civil rights.

4. On or about September 9, 2010, Appellants Pimentel and Chang violated Manual Section 3-01/030.10, Obedience to Laws, Regulations and Orders, and Section 3-01/040.10, Incurring Liability Against the County, when they were found liable to [redacted] in a federal jury trial, Case No. Case No. 2:09-cv-00893, [redacted] *v. Michael Gennaco at al.* The federal jury found by clear and convincing evidence that Pimentel and Chang had violated [redacted]'s

federal civil rights, had committed a state law battery upon [redacted] that the foregoing violations caused injury to [redacted] and that Appellants Pimentel and Chang had acted with malice, oppression or reckless disregard in violating [redacted]'s federal civil rights. By their wrongful conduct, Pimentel and Chang caused the County to incur a liability for legal fees to provide a defense to Pimentel and Chang.

5. Termination of employment is within the range of discipline which is available to the Department for the Manual violations which the Department has proven against Appellants Pimentel and Chang. Given the seriousness of Appellants' misconduct, and the actual harm to the public service, the penalty of termination of employment is appropriate for both Appellant Pimentel and Appellant Chang.

RECOMMENDATION TO COMMISSION

I respectfully recommend to the Commission that the discipline against Appellants Anthony Pimentel and Davie Chang be upheld.

Dated: SEPTEMBER 26, 2014

Respectfully Submitted,

Joseph P. Scully, Hearing Officer



County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

September 12, 2011

Deputy Davie Chang, [redacted]

Dear Deputy Chang:

On August 11, 2011, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2209426. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on September 8, 2011.

An investigation under File Number IAB 2209426, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, *Performance to Standards*; and/or 3-01/030.05, *General Behavior*, on or about November 5, 2007, you contacted inmate [redacted] at his cell in regards to a complaint. You and assisting deputies Pimentel and Cordova, handcuffed and removed Mr. [redacted] from his cell to the outdoor area where unreported, unjustifiable force was used on Mr. [redacted], as evidenced by, but not limited to:

   a) punching Mr. [redacted] in the face two or three times, and/or;

b) grabbing and tearing Mr. [redacted]'s tee shirt causing scratch marks on the side of his neck, and/or;

c) having Mr. [redacted] lay face-down on the ground while a knee was placed on Mr. [redacted] back and another knee was placed on Mr. [redacted] neck, and/or;

d) pulling down Mr. [redacted] boxer shorts and spraying "pepper spray" into Mr. [redacted] anal area and testicles, and/or;

e) telling and/or threatening Mr. [redacted] that next time he complains he will be going to "LCMC" hospital with an "add-charge," and that the "actions could be justified" by saying that Mr. [redacted] swung at them, or words to that effect, and/or;

f) upon returning Mr. [redacted] to his cell and after removing the handcuffs, pulling the trigger on a Taser causing it to make an electrical clicking noise and saying, "Boo," or words to that effect, while laughing at Mr. [redacted] when closing the cell door.

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, *Performance to Standards*; and/or 3-01/040.75, *Failure to Make Statements and/or Making False Statements during Departmental Internal Investigations;* and/or 3-01/030.05, *General Behavior*, when you were found in violation of federal civil codes upon verdict of United States District Court, Central District of California Case No. CV-09-893VBF regarding your conduct and actions with inmate [redacted] at TTCF. Thus, your conduct and actions were indicative of a failure to adhere to departmental policies, and use of unjustified and unreported force, a failure to perform to the standards expected of a deputy sheriff, and indicative of being untruthful during an administrative investigation.

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, *Obedience to Laws, Regulations and Orders*; and/or 3-01/050.10, *Performance to Standards*, on or about September 9, 2010, you were found in a civil court of law, Case No. CV-09-893VBF, to have violated by clear and convincing evidence, with malice, oppression and/or reckless disregard, an inmate's federal

civil rights, thereby incurring liability against the Department for economic and non-economic damages. By your actions, you have brought discredit upon yourself and the Sheriff's Department as evidenced by, but not limited to:

a) you were found liable and violated Mr. [redacted] federal civil rights by a judgment of a civil court of law, and/or;

b) your violation of federal civil rights was the direct cause of injury or harm to Mr. [redacted], and/or;

c) you were found to have acted with malice, oppression, or reckless disregard in violating Mr. [redacted] federal civil rights, and/or;

d) you were found to have committed an unlawful state-law battery upon the person of Mr. [redacted], and/or;

e) your unlawful actions were found to be within the course and scope of your employment with the Sheriff's Department.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.10, *Obedience to Laws, Regulations and Orders*; and/or 3-01/040.10, *Incurring Liability Against the County*; on or about September 9, 2010, you were found in a civil court of law, Case No. CV-09-893VBF, to have violated by clear and convincing evidence, with malice, oppression and/or reckless disregard, an inmate's federal civil rights, thereby incurring liability against the Department for economic fees and damages. By your actions, you have brought discredit upon yourself and the Sheriff's Department.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

DENNIS H. BURNS, CHIEF
CUSTODY OPERATIONS DIVISION

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

DHB:JMG:md

c: Advocacy Unit
Carrie A. Stuart, Captain, Twin Towers Correctional Facility
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, Captain, Personnel Administration